

EXHIBIT A

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

S.V.,

Plaintiff,

- vs -

Case No. 10-CV-919

KENNETH KRATZ,

Defendant,

and

STATE OF WISCONSIN and PEERLESS
INDEMNITY INSURANCE COMPANY,

Intervenor-Defendants

Examination of KENNETH KRATZ, taken at the
instance of the Plaintiff, under and pursuant to the
Federal Rules of Civil Procedure, before BREA E. MADSON,
Registered Professional Reporter and Notary Public in and
for the State of Wisconsin, at Borgelt, Powell, Peterson
& Frauen, S.C., 735 North Water Street, Milwaukee,
Wisconsin, on January 8, 2013, commencing at 2:00 p.m.
and concluding at 5:36 p.m.

1 A P P E A R A N C E S

2 FOX & FOX, by
3 MR. MICHAEL FOX,
4 124 West Broadway,
Monona, Wisconsin 53716,
appeared on behalf of the Plaintiff.

5 GODFREY & KAHN, S.C., by
6 MS. LINDA S. SCHMIDT,
One East Main Street, Suite 500,
Post Office Box 2719,
7 Madison, Wisconsin 53701-2719,
appeared on behalf of the Intervenor-Defendants Peerless
8 Indemnity Insurance Company.

9 BORGELT, POWELL, PETERSON & FRAUEN, S.C., by
10 MR. W. TED TORNEHL,
735 North Water Street, 15th Floor,
Milwaukee, Wisconsin 53202-4188,
11 appeared on behalf of the Defendant.

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<p>1 TRANSCRIPT OF PROCEEDINGS 4</p> <p>2 KENNETH KRATZ, called as a witness</p> <p>3 herein, having been first duly sworn on oath, was</p> <p>4 examined and testified as follows:</p> <p>5 EXAMINATION</p> <p>6 BY MR. FOX:</p> <p>7 Q Mr. Kratz, could you state your name and give your 8 current residence address for the record, please?</p> <p>9 A Kenneth Kratz, K-R-A-T-Z, 228 South University 10 Drive, Apartment No. 20, West Bend, Wisconsin 11 53095.</p> <p>12 Q What's your date of birth?</p> <p>13 A 7/23/60.</p> <p>14 Q Are you currently practicing law?</p> <p>15 A Yes.</p> <p>16 Q And how long have you been practicing in this most 17 recent stint?</p> <p>18 A I opened my practice in August of 2012. Took on my 19 first client in the middle of September.</p> <p>20 Q Approximately, when did you initially file a 21 bankruptcy proceeding?</p> <p>22 A I believe it was March of 2012.</p> <p>23 Q 2012 or 2011?</p> <p>24 A No, it was --</p> <p>25 MR. TORNEHL: I don't know.</p>	<p>1 A Yes.</p> <p>2 Q In addition to reviewing the Peerless submissions 3 and some of the pleadings that you've referred to 4 in your preceding answer, did you review an 5 affidavit that you signed and submitted opposing 6 summary judgment by the State of Wisconsin?</p> <p>7 A The declaration?</p> <p>8 Q Right. Declaration.</p> <p>9 A Yes, yes. Sent to me by my lawyer.</p> <p>10 Q The area that I'm going to question you about right 11 now is going to trace your job history following 12 your graduation from law school in 1985.</p> <p>13 A All right.</p> <p>14 Q What was the first job you had after law school?</p> <p>15 A I was hired as the assistant city attorney in the 16 City of La Crosse. I was promoted to deputy city 17 attorney the next year. In 1987, I then joined the 18 La Crosse County District Attorney's Office as an 19 assistant DA where I worked until 1992.</p> <p>20 Q When you were an assistant city attorney for the 21 City of La Crosse, or when you became the deputy, 22 was Peter Kiskien working in the City of La Crosse?</p> <p>23 A I don't know. He certainly wasn't in my office. 24 And he might have -- he might have taken my job. 25 Pat Houlihan was the city attorney at the time.</p>

<p style="text-align: right;">7</p> <p>1 Q So Pat Houlihan was the person who hired you?</p> <p>2 A Yes.</p> <p>3 Q And at that time in the City of La Crosse, were</p> <p>4 there just two legal counsel employed --</p> <p>5 A Yes.</p> <p>6 Q -- directly by the City?</p> <p>7 A I'm sorry, yes.</p> <p>8 Q Okay. When you joined the La Crosse County</p> <p>9 District Attorney's Office, how many DAs were</p> <p>10 there?</p> <p>11 A Five.</p> <p>12 Q And what types of cases did you handle for La</p> <p>13 Crosse County? All types of criminal cases, or did</p> <p>14 you tend to emphasize one area or another?</p> <p>15 A Yes. I did specialize in drug prosecutions, and</p> <p>16 later became the sensitive crimes prosecutor.</p> <p>17 Q And why don't you define for me what a sensitive</p> <p>18 crime was defined as, as that term was used in your</p> <p>19 employment?</p> <p>20 A Sexual assault, both adult and child victims.</p> <p>21 Q Did you handle any domestic abuse prosecutions for</p> <p>22 La Crosse County?</p> <p>23 A I'm sure I did.</p> <p>24 Q Did you receive any special training that was</p> <p>25 related to domestic abuse prosecutions for the</p>	<p style="text-align: right;">9</p> <p>1 were involved in public prosecution work on behalf</p> <p>2 of the district attorney's office, what type of</p> <p>3 special considerations, if any, were reviewed with</p> <p>4 you as they might pertain to domestic abuse</p> <p>5 prosecutions?</p> <p>6 A I don't understand. I'm sorry.</p> <p>7 Q What, if anything, was unique about domestic abuse</p> <p>8 prosecutions, or what types of considerations were</p> <p>9 special to domestic abuse prosecutions that might</p> <p>10 have been different than other types of</p> <p>11 prosecutions?</p> <p>12 A At that time, in the late '80s, there were various</p> <p>13 advocacy programs that were being developed. And I</p> <p>14 remember in La Crosse, there was a Domestic</p> <p>15 Violence Intervention Project, "DVIP," it was</p> <p>16 called, that -- it was multi-jurisdictional.</p> <p>17 Included law enforcement advocates, prosecutors and</p> <p>18 the like. And so it really was, I guess what I'll</p> <p>19 call, the beginning of the specialized units around</p> <p>20 the state for DV prosecutions and working with DV</p> <p>21 victims and those issues.</p> <p>22 And so the difficulty I'm having,</p> <p>23 Mr. Fox, is, you know, although those -- those</p> <p>24 victim services developments began probably about</p> <p>25 that time, they've certainly morphed, or grown,</p>
<p style="text-align: right;">8</p> <p>1 County of La Crosse?</p> <p>2 A What do you mean by "special"? There were -- yeah.</p> <p>3 Q Training that emphasized that particular area of</p> <p>4 prosecution and whatever unique considerations</p> <p>5 there might be in the prosecution of such crimes?</p> <p>6 A Yes. In -- typically, in DA trainings, there will</p> <p>7 be a number of topics that are held over a</p> <p>8 several-day training time frame. Domestic abuse</p> <p>9 prosecution issues was certainly included in those.</p> <p>10 I may also have attended domestic violence</p> <p>11 trainings that were held or specific to that issue.</p> <p>12 Certainly, I have over the years, over the 25 years</p> <p>13 of it.</p> <p>14 Q I'll probably --</p> <p>15 A That I've practiced.</p> <p>16 Q I will get into that momentarily. I'm going to try</p> <p>17 to trace it chronologically, if I can.</p> <p>18 A I understand.</p> <p>19 Q So you would have, as early as 1987 and 1992, when</p> <p>20 you worked for the La Crosse County District</p> <p>21 Attorney's Office, you would have received some</p> <p>22 specialized training in the area of domestic abuse</p> <p>23 prosecution?</p> <p>24 A I think that's fair.</p> <p>25 Q And back in that initial five-year period when you</p>	<p style="text-align: right;">10</p> <p>1 over the years, and really up through -- up through</p> <p>2 when I left prosecution in 2010.</p> <p>3 Q Let's talk about that growth then because it might</p> <p>4 be easier than creating artificial lines of</p> <p>5 distinction as to when something was -- there was</p> <p>6 one consideration and there's a definite dividing</p> <p>7 line, another consideration, et cetera.</p> <p>8 How did either the specialty or the</p> <p>9 emphasis of domestic abuse prosecution grow over</p> <p>10 the years as you have referred to the growth in</p> <p>11 your last answer?</p> <p>12 A Well, I think, systemically, or at least from</p> <p>13 inside DA's offices, there's been the push to have</p> <p>14 prosecutors specialize in those areas so that most</p> <p>15 DA's offices, now, certainly, those that have the</p> <p>16 staff to support it, have one prosecutor, perhaps a</p> <p>17 team of prosecutors, that do nothing but domestic</p> <p>18 violence prosecution.</p> <p>19 Q And in your observation, why did that occur? What</p> <p>20 was special or unique to those types of</p> <p>21 prosecutions that led to the emphasizing or</p> <p>22 development of specialized units?</p> <p>23 A Well, my personal opinion about why those were</p> <p>24 created was because of funding. There were funding</p> <p>25 initiatives throughout the '80s and '90s that</p>

<p style="text-align: right;">11</p> <p>1 created positions for domestic violence, both</p> <p>2 investigators and prosecutors. And so these</p> <p>3 specialized units, I think, were created out of the</p> <p>4 ability to do so. At the same time, that drug</p> <p>5 unit, multi-jurisdictional drug units, were kind of</p> <p>6 created, and those were emphasized. And so I don't</p> <p>7 think it was so much a function of recognizing a</p> <p>8 particular need to do that, but what resources that</p> <p>9 were available to create those units.</p> <p>10 Q And why, in your opinion, were resources created to</p> <p>11 direct themselves to those types of prosecutions?</p> <p>12 A I don't know. It was a change -- just a change of</p> <p>13 -- at least I'm guessing here, a change of,</p> <p>14 perhaps, political or fiscal priorities within the</p> <p>15 various levels of government.</p> <p>16 Q Well, let's talk about, not what you can guess at,</p> <p>17 but what you may now. Were there unique aspects to</p> <p>18 the prosecution of domestic abuse cases that did</p> <p>19 not necessarily or generally apply to the</p> <p>20 prosecution of other types of criminal cases where</p> <p>21 there was a perpetrator and a victim?</p> <p>22 A Yes, I think there are.</p> <p>23 Q Let's go over those, if you would, please.</p> <p>24 A Okay.</p> <p>25 Q Identify those for me.</p>	<p style="text-align: right;">13</p> <p>1 domestic violence. And so those are the major</p> <p>2 differences I can think of.</p> <p>3 Q One of the major differences in domestic abuse was</p> <p>4 a reluctance of the victim to come forward and</p> <p>5 prosecute the crime, correct?</p> <p>6 A It can be. Not always.</p> <p>7 Q Well, it isn't always the case, but when I speak, I</p> <p>8 speak generally of why there was a specialized</p> <p>9 emphasis on domestic abuse, having practiced</p> <p>10 criminal law for about 15 years before I did all</p> <p>11 the civil law I did, and maybe even being a little</p> <p>12 bit older than you are, I do remember the earlier</p> <p>13 development of this. So correct me if I'm wrong.</p> <p>14 Initially, it was, years ago, often times domestic</p> <p>15 -- these crimes were not prosecuted because a</p> <p>16 spouse was reluctant to prosecute a claim that</p> <p>17 might put another spouse in criminal jeopardy,</p> <p>18 correct?</p> <p>19 A I think that's true.</p> <p>20 Q And that was something that was more prevalent</p> <p>21 among the victims of domestic abuse crimes because</p> <p>22 of the nature of the familial relationship in which</p> <p>23 domestic abuse crimes often took place, correct?</p> <p>24 A I think that's true as well.</p> <p>25 Q And so part of the emphasis in terms of the</p>
<p style="text-align: right;">12</p> <p>1 A Well, the most obvious is the relationship between</p> <p>2 the victim and the perpetrator. These cases,</p> <p>3 typically, are not single-event cases. Typically,</p> <p>4 there is a pattern of conduct. Domestic violence,</p> <p>5 again, typically, is something that is progressive</p> <p>6 in nature over the years.</p> <p>7 There's a unique need, or at least I have</p> <p>8 a sense that the system believes that there's a</p> <p>9 unique need, for early intervention separation,</p> <p>10 maybe even calling it a "cooling off period"</p> <p>11 between a domestic violence event and reunification</p> <p>12 of a family. Bond conditions, as example, or</p> <p>13 emphasized -- a heavy emphasis on some immediate,</p> <p>14 if not consequence, at least an immediate</p> <p>15 separation, physical separation of a victim and a</p> <p>16 perpetrator. And so mandatory arrest laws, things</p> <p>17 like that, were created to encourage or even force</p> <p>18 law enforcement, as an example, to incarcerate or</p> <p>19 hold in a custodial setting a perpetrator of</p> <p>20 domestic violence. Separate than other crimes.</p> <p>21 Separate than, let's say, you know, property</p> <p>22 crimes, theft, or something like that. There</p> <p>23 aren't the same immediacy goals that are -- that</p> <p>24 are furthered through either investigator or</p> <p>25 prosecution efforts in other crimes that are in</p>	<p style="text-align: right;">14</p> <p>1 specialization with regard to dealing with these</p> <p>2 particular types of crimes was to set a -- to</p> <p>3 create a unit that could deal with that reluctance,</p> <p>4 assure the victim of their safety, and assure that</p> <p>5 the prosecution would be handled in a very</p> <p>6 sensitive manner?</p> <p>7 A I'm sure that's true. I'm sure the collateral</p> <p>8 benefit of these specialized units was to have the</p> <p>9 prosecutor handling those particular kinds of cases</p> <p>10 well aware of the dynamics of domestic violence</p> <p>11 cases.</p> <p>12 Q Another unique, or at least more prevalent aspect</p> <p>13 of domestic abuse cases, was that there were often</p> <p>14 times more people involved than just the</p> <p>15 perpetrator; let's say the physically harmful act,</p> <p>16 and the victim of that physically harmful act.</p> <p>17 There would be children potentially involved,</p> <p>18 family separation potentially involved, correct?</p> <p>19 A I'm not sure that was an emphasis at all in the --</p> <p>20 this prosecution model. I think -- I think any</p> <p>21 crime that happens in the home, there's a potential</p> <p>22 for impact on children, whether it's domestic</p> <p>23 violence or sexual assault or really any kind of</p> <p>24 drug crimes, meth labs, those kind of things.</p> <p>25 There's always the potential for impact, even</p>

<p style="text-align: right;">15</p> <p>1 unintended consequences on children in the home.</p> <p>2 But to finish my point, I don't think it's at all</p> <p>3 unique to domestic violence. It's a function of</p> <p>4 some crime happening that is going to have some</p> <p>5 impact, financial, emotional or otherwise, on</p> <p>6 children who might be in that sphere.</p> <p>7 Q And I didn't say that it was unique to domestic</p> <p>8 violence crimes. I used my words with great care.</p> <p>9 I said that it was more prevalent in cases of</p> <p>10 domestic abuse that a family was involved, that</p> <p>11 children were involved, on average, than it was for</p> <p>12 other types of crimes.</p> <p>13 A And I'm saying I don't think that's true.</p> <p>14 Q You don't think that's true?</p> <p>15 A Absolutely not. It's a function of where the crime</p> <p>16 happens. Crimes that happen in the home are going</p> <p>17 to have children involved in more than, let's say,</p> <p>18 an armed robbery at a bank.</p> <p>19 Q What type of domestic abuse crime do you know of</p> <p>20 that does not involve a family?</p> <p>21 A Domestic situations are defined not just as</p> <p>22 familial relationships. And so there can be a</p> <p>23 boyfriend/girlfriend situation that certainly</p> <p>24 aren't part of a same family that are categorized</p> <p>25 as domestic violence.</p>	<p style="text-align: right;">17</p> <p>1 prosecutor training, yes.</p> <p>2 Q And how often have you taught that?</p> <p>3 A Less than ten.</p> <p>4 Q Over what period of time?</p> <p>5 A After I'd become DA. After 1992 and through,</p> <p>6 probably, 2008.</p> <p>7 Q Let me go back and continue on my questions related</p> <p>8 to your career. Where did you go after you served</p> <p>9 in your position, as you have identified it, with</p> <p>10 the County of La Crosse?</p> <p>11 A I was named by Governor Thompson to assume the</p> <p>12 position of Calumet County district attorney in</p> <p>13 1992. Later that same year, I was elected to my</p> <p>14 first term as elected DA of Calumet County and</p> <p>15 served in that capacity until 2010.</p> <p>16 Q And where did you reside when you first took the</p> <p>17 job as district attorney for Calumet County?</p> <p>18 A City of Appleton.</p> <p>19 Q What was your address there?</p> <p>20 A On Sylvan Drive, S-Y-L-V-A-N. It was a rental. A</p> <p>21 duplex, as I recall.</p> <p>22 Q And what was your next address during the time that</p> <p>23 you worked for Calumet County?</p> <p>24 A I purchased a house on Diamond Court with my then</p> <p>25 wife Jane, J-A-N-E.</p>
<p style="text-align: right;">16</p> <p>1 Q What type of domestic abuse crime is defined under</p> <p>2 the laws of the State of Wisconsin that does not</p> <p>3 involve a relationship, whether it be a</p> <p>4 boyfriend/girlfriend relationship, or it be a</p> <p>5 familial relationship?</p> <p>6 A There's always a relationship involved. That's the</p> <p>7 definition. In fact, the word "domestic" describes</p> <p>8 the relationship between the alleged perpetrator</p> <p>9 and the victim.</p> <p>10 Q So it's either a familial relationship or a</p> <p>11 family-like relationship, such as live-in parties</p> <p>12 who may live as, in effect, husband and wife?</p> <p>13 A Most often, yes.</p> <p>14 Q Is there any other crime that has the frequency of</p> <p>15 that type of familial relationship that is present</p> <p>16 by definition as it is present in domestic abuse</p> <p>17 cases?</p> <p>18 A Not by definition, no.</p> <p>19 Q Okay. So would it be true that the domestic abuse</p> <p>20 cases more often than the general category of other</p> <p>21 cases involves a familial-type relationship?</p> <p>22 A I don't know.</p> <p>23 Q Have you ever taught the prosecution of domestic</p> <p>24 abuse cases?</p> <p>25 A As part of other cross-training, if you will, new</p>	<p style="text-align: right;">18</p> <p>1 Q And where is Diamond Court?</p> <p>2 A In the town of Harrison, which is an area of --</p> <p>3 Appleton area called Darboy, D-A-R-B-O-Y. For lack</p> <p>4 of a better term, a suburb of Appleton.</p> <p>5 Q That is a suburb of Sherwood. And how long did you</p> <p>6 live in the home in Darboy?</p> <p>7 A Until 1994. Excuse me. Let me -- it might have</p> <p>8 been '95, but it was certainly in that time frame.</p> <p>9 Q Where did you live after that?</p> <p>10 A A duplex in the same Darboy area. My wife, Jane,</p> <p>11 and I had separated, had gotten divorced, and I</p> <p>12 lived in a duplex.</p> <p>13 Q In where?</p> <p>14 A Darboy.</p> <p>15 Q In either residence that you maintained in Darboy,</p> <p>16 did you keep any room in the home that was used for</p> <p>17 either the storage of sexual-related literature or</p> <p>18 -- let's just start out with that. That was used</p> <p>19 for the storage of sexual literature?</p> <p>20 A No.</p> <p>21 Q Did you ever tell anybody that you had done so,</p> <p>22 that you had a special room that you kept your sex</p> <p>23 literature?</p> <p>24 A No.</p> <p>25 Q Did you ever tell anybody that you had a black</p>

<p style="text-align: right;">19</p> <p>1 room?</p> <p>2 A No.</p> <p>3 Q In any home that you've ever existed in?</p> <p>4 A No.</p> <p>5 Q Did you ever tell anybody that you had a room where</p> <p>6 you videoed sexual activities?</p> <p>7 A No.</p> <p>8 Q Do you know a woman named Amy Price?</p> <p>9 A Yes. I'm familiar with her name.</p> <p>10 Q And how are you familiar with it?</p> <p>11 A She was a woman who had had a case in Calumet</p> <p>12 County. I don't know the year. I think it was,</p> <p>13 perhaps, '99.</p> <p>14 Q What type of case?</p> <p>15 A I believe it was a domestic abuse case.</p> <p>16 Q Did you prosecute that case?</p> <p>17 A I don't recall if I did or if my assistant did. It</p> <p>18 was in our office. I know that.</p> <p>19 Q And did you ever speak with Ms. Price about that</p> <p>20 case?</p> <p>21 A After the case was over, I did. That's why I don't</p> <p>22 recall having prosecuted it individually. I just</p> <p>23 recall my conversations with Ms. Price after the</p> <p>24 fact.</p> <p>25 Q And where did the conversations that you had with</p>	<p style="text-align: right;">21</p> <p>1 A Yes. Well, wherever it is, yes. She emailed me</p> <p>2 from, I recall, her work, where she worked as an</p> <p>3 accountant or some kind of bookkeeper. I believe</p> <p>4 she worked in Brillion at the time.</p> <p>5 Q Did you ever represent to Ms. Sherwood that you --</p> <p>6 A Ms. Price?</p> <p>7 Q Excuse me, Ms. Price, that you were involved with a</p> <p>8 dominatrix, or knew of dominatrixes, and that was</p> <p>9 an interest of yours?</p> <p>10 A I don't recall.</p> <p>11 Q Do you deny that you did so?</p> <p>12 A I don't recall.</p> <p>13 Q Were you ever involved with dominatrixes?</p> <p>14 MR. TORNEHL: Object. I think that's</p> <p>15 irrelevant, immaterial, and not likely to lead to</p> <p>16 the discovery of admissible evidence.</p> <p>17 BY MR. FOX:</p> <p>18 Q Were you?</p> <p>19 MR. TORNEHL: Don't answer that unless</p> <p>20 you can tell me why this is relevant.</p> <p>21 MR. FOX: It's relevant to his</p> <p>22 credibility.</p> <p>23 MR. TORNEHL: No, it's not.</p> <p>24 MR. FOX: Oh, yes, it is. And there's no</p> <p>25 exclusion -- he's not privileged to not testify to</p>
<p style="text-align: right;">20</p> <p>1 Ms. Price after the fact occur?</p> <p>2 A There were personal conversations, but also email</p> <p>3 conversations, email exchanges.</p> <p>4 Q And where did Ms. Price live when you had these</p> <p>5 email exchanges with her?</p> <p>6 A I believe she lived in the -- it was a Sherwood</p> <p>7 area. I don't know what township that was actually</p> <p>8 in.</p> <p>9 Q Did you ever have sexual contact with her?</p> <p>10 A I don't know. I went to her house on one occasion,</p> <p>11 and I remember having kissed her. I don't recall,</p> <p>12 however, any sexual contact.</p> <p>13 Q Are you just saying you don't recall, or are you</p> <p>14 denying that you had it?</p> <p>15 A I don't recall. If there was sexual contact, it</p> <p>16 was over the clothing. There wasn't any</p> <p>17 intercourse. You know, I can rule out things that</p> <p>18 wouldn't have happened, but I don't recall if there</p> <p>19 may have been some sexual contact related to</p> <p>20 kissing her on one occasion.</p> <p>21 Q Did you -- did she contact you to set up this</p> <p>22 situation where this kissing and/or sexual contact</p> <p>23 may have occurred?</p> <p>24 A She invited me to her home.</p> <p>25 Q And that would be her home in Sherwood?</p>	<p style="text-align: right;">22</p> <p>1 this. It's not harassing. If he did, it's</p> <p>2 something he's done, it may contradict other</p> <p>3 statements he has made. Those statements may be</p> <p>4 relevant to the way he approached my client, and</p> <p>5 the proceeding that is at issue in this case. And</p> <p>6 I believe I have a full right to ask it, and I will</p> <p>7 go to the judge and demand that if I need to. But</p> <p>8 I don't think there's any reason he has a privilege</p> <p>9 not to answer that question here. It is calculated</p> <p>10 to lead to discovery and that's all it has to be.</p> <p>11 MR. TORNEHL: I don't see where it's</p> <p>12 calculated to lead to discovery.</p> <p>13 MR. FOX: How could it not be calculated</p> <p>14 to lead to the credibility of --</p> <p>15 MR. TORNEHL: What does a dominatrix have</p> <p>16 anything to do with your client and Mr. Kratz's</p> <p>17 texting relationship? You know? Nothing.</p> <p>18 MR. FOX: Well, I'm not going to lay out</p> <p>19 my entire case for you now, and if you want to lay</p> <p>20 it out, and you want to tell him not to answer, I</p> <p>21 don't have to make a proffer more than I have. If</p> <p>22 you think that the federal rules so narrowly</p> <p>23 restrict my ability to inquire on a case that</p> <p>24 involves a sexual approach to my client in his</p> <p>25 position as district attorney, and I'm asking him</p>

<p style="text-align: center;">23</p> <p>1 questions about what he said to another person who</p> <p>2 was also a domestic abuse victim, and what</p> <p>3 conversations he had with her, and how they might</p> <p>4 be relevant to my client, it's your privilege to do</p> <p>5 so. We'll see what Judge Griesbach has to say</p> <p>6 about it.</p> <p>7 MR. TORNEHL: Can we take a break and let</p> <p>8 me talk to my client?</p> <p>9 MR. FOX: Sure.</p> <p>10 (Short recess.)</p> <p>11 MR. TORNEHL: On the record, I don't know</p> <p>12 if we need to hear exactly what the question was,</p> <p>13 but I would allow questions that you have of</p> <p>14 Mr. Kratz relating to his interactions with Amy</p> <p>15 Price. If it's a general question about other</p> <p>16 women that have nothing to do with this case in any</p> <p>17 way, shape or form, I'm not going to allow those.</p> <p>18 So I forget -- I took it your question was more</p> <p>19 general. So I don't know if you want to restate it</p> <p>20 or --</p> <p>21 MR. FOX: Well, my first question was one</p> <p>22 where he said he didn't recall stating something to</p> <p>23 her about a dominatrix, if I recall his answer</p> <p>24 correctly. I want to corroborate the truthfulness</p> <p>25 of what she will testify he stated to her by asking</p>	<p style="text-align: center;">25</p> <p>1 corroborates or doesn't corroborate the</p> <p>2 truthfulness of her statement regarding her</p> <p>3 interactions as a domestic assault victim with him</p> <p>4 in terms of sexual discussions.</p> <p>5 MR. TORNEHL: If she wants to testify</p> <p>6 someday that he said things to her about</p> <p>7 dominatrixes and he says he doesn't recall, that's</p> <p>8 going to be the testimony.</p> <p>9 MR. FOX: Well, I don't think you can --</p> <p>10 I'm sorry, Ted. I don't think you can circumscribe</p> <p>11 your -- I know you don't want him to testify to</p> <p>12 this, but that's no reason to instruct him not to</p> <p>13 testify. I have a right to inquire into things</p> <p>14 that affect his credibility, that test his</p> <p>15 credibility with regard to these types of</p> <p>16 interactions. And if he, in fact, answers the</p> <p>17 question one way, that will mean one thing with</p> <p>18 regard to his credibility. If he answers it</p> <p>19 another way, it will mean another thing with regard</p> <p>20 to his credibility, as it will mean with regard to</p> <p>21 her credibility.</p> <p>22 MR. TORNEHL: So your question to</p> <p>23 Mr. Kratz is: Has he ever discussed dominatrixes</p> <p>24 with anybody?</p> <p>25 MR. FOX: No. My question is precisely</p>
<p style="text-align: center;">24</p> <p>1 whether or not that was something that would have</p> <p>2 been within reason for him to say.</p> <p>3 MR. TORNEHL: Okay. You can ask him</p> <p>4 that.</p> <p>5 MR. FOX: Could you read back my last</p> <p>6 question?</p> <p>7 (Last question read.)</p> <p>8 MR. TORNEHL: That's not the question I</p> <p>9 would allow. That's got nothing to do -- if it's</p> <p>10 something to do with Amy Price, and you're getting</p> <p>11 to anything that she may say to contradict the</p> <p>12 truthfulness of what he may say, that's fine.</p> <p>13 MR. FOX: Well, this corroborates the</p> <p>14 truthfulness of her representation that Mr. Kratz</p> <p>15 discussed dominatrixes with her. He cannot hide</p> <p>16 behind, "I don't recall." If, in fact, he is</p> <p>17 involved with dominatrixes, that would lend</p> <p>18 credence to the truthfulness of her statement that</p> <p>19 he said that to her. If he says here, in answer to</p> <p>20 the question under oath, he's never been involved</p> <p>21 with dominatrixes, or that wouldn't be a topic he</p> <p>22 would have even thought of or discussed, then it</p> <p>23 will potentially undermine her credibility when she</p> <p>24 testifies that's what he says. So I guess I'd lay</p> <p>25 that out pretty clearly. And I believe it either</p>	<p style="text-align: center;">26</p> <p>1 the question that I asked. Have you been involved</p> <p>2 with dominatrixes? Precisely that. Because that</p> <p>3 will make the likelihood that he made the statement</p> <p>4 she will testify that he made to her greater.</p> <p>5 MR. TORNEHL: I'm not gonna let him</p> <p>6 answer that. We can talk to the judge about that.</p> <p>7 MR. FOX: Okay. We will.</p> <p>8 (Exhibits No. 1 through 5 were marked.)</p> <p>9 BY MR. FOX:</p> <p>10 Q Have you ever talked to anybody about dominatrixes?</p> <p>11 A About dominatrixes or about domination and</p> <p>12 submission?</p> <p>13 Q Let's talk about dominatrixes first, and then we'll</p> <p>14 talk about domination and submission.</p> <p>15 A I'm sure I have talked to other people sometime in</p> <p>16 my life about that, yes.</p> <p>17 Q And why are you sure of that?</p> <p>18 A I'm just sure I have. I don't understand your</p> <p>19 question. I have had those conversations at some</p> <p>20 point in my past.</p> <p>21 Q With whom have you had them?</p> <p>22 A I don't recall.</p> <p>23 Q Have you had them with women?</p> <p>24 A Yes.</p> <p>25 Q Have you had them with women who were women you</p>

<p style="text-align: right;">27</p> <p>1 encountered as a result of your prosecutorial</p> <p>2 duties?</p> <p>3 A Not that I recall.</p> <p>4 Q Have you had them with women you haven't</p> <p>5 encountered as a result of your prosecutorial</p> <p>6 duties?</p> <p>7 A Yes.</p> <p>8 Q And with whom did you have such discussions?</p> <p>9 A Women I've been in relationships with.</p> <p>10 Q Have you had any such discussions with men?</p> <p>11 A No.</p> <p>12 Q You were disciplined by the state bar, correct?</p> <p>13 A No, that's not correct.</p> <p>14 Q Okay. You were charged with disciplinary offenses</p> <p>15 by the state bar?</p> <p>16 A They filed a formal complaint against me, yes.</p> <p>17 Q Okay. And what was the outcome of that formal</p> <p>18 complaint?</p> <p>19 A It's still pending.</p> <p>20 Q Okay. Was there a hearing related to that formal</p> <p>21 complaint?</p> <p>22 A Yes.</p> <p>23 Q And what were the charges that were heard in that</p> <p>24 hearing? What were you charged with doing that was</p> <p>25 the subject of the evidence that was introduced at</p>	<p style="text-align: right;">29</p> <p>1 before any -- anything else happened to the</p> <p>2 prosecution of the case.</p> <p>3 Q So that, to your understanding, there was no</p> <p>4 conflict in your approaching somebody who was the</p> <p>5 complainant in a sexual abuse case that you were</p> <p>6 prosecuting, and on which that individual is</p> <p>7 relying on you to prosecute? There was no conflict</p> <p>8 with your duties and approaching them for a</p> <p>9 potential sexual relationship?</p> <p>10 A My understanding was that they -- the theory of</p> <p>11 their case was whether it was an actual or</p> <p>12 potential conflict under the rules didn't make any</p> <p>13 difference. It's under the heading category of</p> <p>14 "Conflict of Interest."</p> <p>15 Q Well, let me just ask you this: Do you see a</p> <p>16 conflict in approaching, if you were the prosecutor</p> <p>17 in a sexual or a domestic abuse case, in</p> <p>18 approaching the victim while that case is pending,</p> <p>19 and you are supposed to be prosecuting the</p> <p>20 perpetrator of that abuse? Do you see any conflict</p> <p>21 with approaching that victim for a sexual</p> <p>22 relationship?</p> <p>23 A I see a conflict if there was work on the case.</p> <p>24 That is, if there was something that I did with the</p> <p>25 file after the -- in this case, electronic</p>
<p style="text-align: right;">28</p> <p>1 that hearing?</p> <p>2 A I entered no contest pleas to allegations of</p> <p>3 conflict of interest, of sexual harassment, and of</p> <p>4 demonstrating an offensive personality. The</p> <p>5 hearing itself, Mr. Fox, was on the sanctions part</p> <p>6 of the case, on the remedy, the penalty, if you</p> <p>7 will.</p> <p>8 Q Let's talk about what you have entered, a no</p> <p>9 contest plea, as you've testified to.</p> <p>10 A All right.</p> <p>11 Q You said you entered a no contest plea to a</p> <p>12 conflict of interest. What was the conflict of</p> <p>13 interest that was the subject of that no contest</p> <p>14 plea?</p> <p>15 A It was regarding the text messages here. This -- a</p> <p>16 conflict or, I guess, it was presented as a</p> <p>17 potential conflict since there was no actual</p> <p>18 conflict between my role as prosecutor and your</p> <p>19 client as victim of a criminal case that I was</p> <p>20 prosecuting.</p> <p>21 Q So the no contest plea you entered with regard to a</p> <p>22 conflict of interest was with regard to a potential</p> <p>23 conflict of interest or a conflict of interest?</p> <p>24 A Potential is what I understood. There was no</p> <p>25 actual conflict as I had withdrawn from the case</p>	<p style="text-align: right;">30</p> <p>1 communication had commenced. So what I'm saying</p> <p>2 is, if I would have stayed on the case, let's say,</p> <p>3 while the case was being prosecuted, while the case</p> <p>4 was either being negotiated or while decisions were</p> <p>5 being made on the case, that would not just be a</p> <p>6 potential, that would be an actual conflict. In</p> <p>7 this case, that didn't happen.</p> <p>8 Q Okay. In your mind, if you're prosecuting a case,</p> <p>9 and there was a woman who, as in this particular</p> <p>10 case, had been abused -- and let's try to give a</p> <p>11 little background of this case. This is a woman</p> <p>12 that you understood had been physically attacked,</p> <p>13 meaning my client?</p> <p>14 A Yes. That was her allegation. That's right.</p> <p>15 Q Well, did you disbelieve her allegation?</p> <p>16 A I had no reason to disbelieve her, no.</p> <p>17 Q Do you prosecute an allegation that you disbelieve?</p> <p>18 A No, I had no reason to disbelieve her.</p> <p>19 Q Okay. So you believed that she had been physically</p> <p>20 attacked?</p> <p>21 A I'm telling you that's what she said, and I had no</p> <p>22 reason not to believe that.</p> <p>23 Q Well, I'm just --</p> <p>24 A I don't know whether --</p> <p>25 Q I'm trying to make this an easy question. Did you</p>

<p style="text-align: right;">31</p> <p>1 or did you not believe --</p> <p>2 A Really?</p> <p>3 Q Well, yeah, I am. Did you or did you not believe</p> <p>4 that she was physically attacked?</p> <p>5 A I believed she was the victim of an attack, yes.</p> <p>6 Q Okay. And did you believe that as a facet of that</p> <p>7 attack, that hands had been placed around her neck?</p> <p>8 A Yes.</p> <p>9 Q And did you believe that as a facet of that attack,</p> <p>10 that in placing hands around her neck, the person</p> <p>11 who was placing those hands around her neck was</p> <p>12 attempting to compromise the flow of air into her</p> <p>13 lungs?</p> <p>14 A Yes.</p> <p>15 Q So you believe that the person, who is my client,</p> <p>16 was at least the victim of an attempted</p> <p>17 strangulation?</p> <p>18 A That's correct.</p> <p>19 Q And if I understand you correctly, based on your</p> <p>20 testimony today, what you're saying is that if that</p> <p>21 person comes to you as a DA and asks you to</p> <p>22 prosecute the case, it would not be a conflict for</p> <p>23 you to solicit a sexual relationship with that</p> <p>24 individual unless you took action on the case,</p> <p>25 correct?</p>	<p style="text-align: right;">33</p> <p>1 exists, putting his personal interest in a</p> <p>2 potential personal relationship, at least</p> <p>3 potentially ahead of or separate from the</p> <p>4 prosecution of the criminal case. It's a conflict.</p> <p>5 Q And in terms of the personal interest that the</p> <p>6 prosecutor has, does the prosecutor undertake a</p> <p>7 prosecution of domestic abuse, such as the</p> <p>8 prosecution you undertook for my client, have an</p> <p>9 interest in fully prosecuting the matter to some</p> <p>10 sort of conclusion that directs itself toward</p> <p>11 either punishing the individual or acquitting the</p> <p>12 individual who's accused of the domestic abuse? Is</p> <p>13 your interest in acquitting that individual?</p> <p>14 MR. TORNEHL: Object. I've got to object</p> <p>15 to the form of the question because it ended up</p> <p>16 being very multiple.</p> <p>17 BY MR. FOX:</p> <p>18 Q Well, let me withdraw that. Did you have any</p> <p>19 interest in acquitting the individual who attempted</p> <p>20 to strangle my client?</p> <p>21 A If the evidence didn't support it, absolutely. My</p> <p>22 interest was for the search for the truth. What</p> <p>23 actually happened. My interest is that of justice.</p> <p>24 That is, if he did it, he should be held</p> <p>25 accountable for it. If he didn't do it, then he</p>
<p style="text-align: right;">32</p> <p>1 A Until I do something with the case, from the point</p> <p>2 that that communication happens, until I get off</p> <p>3 the case, I believe it's not an actual conflict.</p> <p>4 That's correct. That's my --</p> <p>5 Q So as you sit here today, the -- for a victim such</p> <p>6 as my client in that particular case, you have not</p> <p>7 violated any conflict provision with her by asking</p> <p>8 her to have a sexual relationship with you?</p> <p>9 A That's an absolutely separate question, Mr. Fox.</p> <p>10 Q Well, let me --</p> <p>11 A Absolutely different question.</p> <p>12 Q I didn't think it was, but I'll defer to your</p> <p>13 objection.</p> <p>14 A Fine. The rules of professional responsibility as</p> <p>15 I've explained under the category of "Conflict of</p> <p>16 Interest" suggest that that kind of behavior,</p> <p>17 whether it's an actual or potential conflict, is a</p> <p>18 violation of the rules of professional</p> <p>19 responsibility. I agree that, yes, it is.</p> <p>20 Q Why? Why do you think it is?</p> <p>21 A Why do I think --</p> <p>22 Q It is, as you've just asked.</p> <p>23 A Right. Because a prosecutor in that situation has</p> <p>24 a personal interest, or the appearance of a</p> <p>25 personal interest in the outcome of the case</p>	<p style="text-align: right;">34</p> <p>1 should be acquitted of any involvement in that</p> <p>2 prosecution.</p> <p>3 Q When you undertake the prosecution as you did in</p> <p>4 the case involving my client, did you have an</p> <p>5 interest in convicting the individual whom you</p> <p>6 charged?</p> <p>7 A I don't think so. We don't seek convictions as</p> <p>8 prosecutors. We seek just results.</p> <p>9 Q So when you make a prosecutorial decision to charge</p> <p>10 somebody, you don't believe that you favor</p> <p>11 conviction versus acquittal, one way or the other?</p> <p>12 A I think that's absolutely right. I think when you</p> <p>13 charge somebody, you believe the evidence supports</p> <p>14 that. If the evidence at some point changes, then</p> <p>15 you don't continue to prosecute the case.</p> <p>16 Q Well, I'm sorry, I'm not following your answer.</p> <p>17 When you undertake to charge somebody, you believe</p> <p>18 you have enough evidence to convict that individual</p> <p>19 of the crime beyond a reasonable doubt?</p> <p>20 A I think that's true. It's only at a probable cause</p> <p>21 level, but I will admit that when I took cases on,</p> <p>22 I believed there was evidence available at the time</p> <p>23 of charging to sustain a conviction beyond a</p> <p>24 reasonable doubt, yes.</p> <p>25 Q So when you texted my client soliciting a sexual</p>

<p style="text-align: right;">35</p> <p>1 relationship, you believed at the time you texted</p> <p>2 my client that you had sufficient evidence to</p> <p>3 convict him of attempting to strangle her beyond a</p> <p>4 reasonable doubt?</p> <p>5 A I never solicited a sexual relationship from your</p> <p>6 client.</p> <p>7 Q Okay. I won't even characterize it. When you</p> <p>8 texted my client, and we'll let the jury decide</p> <p>9 what you were or were not soliciting, when you</p> <p>10 texted her, you believed you had enough information</p> <p>11 to convict the alleged perpetrator of having</p> <p>12 attempted to strangle her beyond a reasonable</p> <p>13 doubt?</p> <p>14 A Yes.</p> <p>15 Q Putting your prosecutorial duties aside, is it, at</p> <p>16 least in your opinion, ethical for a lawyer to</p> <p>17 inquire into a potential sexual relationship with a</p> <p>18 client they represent?</p> <p>19 A Are you talking about hypothetically?</p> <p>20 Q Right.</p> <p>21 A Since my client was the State of Wisconsin,</p> <p>22 hypothetically, attorney/client relationships are</p> <p>23 prescribed by the rules of professional</p> <p>24 responsibility, yes.</p> <p>25 Q That doesn't answer the question. Do you believe</p>	<p style="text-align: right;">37</p> <p>1 No. 1 before?</p> <p>2 A I have.</p> <p>3 Q Did you receive Exhibit No. 1 at any time through</p> <p>4 the mail or some other way, such as hand delivery</p> <p>5 or by electronic mail?</p> <p>6 A It was in my office after I had returned from</p> <p>7 inpatient treatment. So the first time that I had</p> <p>8 seen that this was ever mailed to my office was</p> <p>9 in -- I believe it was November of 2010. I was</p> <p>10 aware, however, of it -- of its existence and it</p> <p>11 having been drafted.</p> <p>12 Q You mentioned inpatient treatment. What inpatient</p> <p>13 treatment were you involved in?</p> <p>14 A The 21st of September, I was admitted to a</p> <p>15 treatment facility in Hattiesburg, Mississippi,</p> <p>16 where I stayed until, I think it was the 30th of</p> <p>17 October.</p> <p>18 Q And what were you being treated for there?</p> <p>19 A A combination of behavioral addiction and chemical</p> <p>20 dependency.</p> <p>21 Q And what were the chemicals on which you were</p> <p>22 dependent?</p> <p>23 A Diagnosed as alcohol and benzodiazepine dependent.</p> <p>24 Q How long --</p> <p>25 A They might have even named the drugs, and I'm happy</p>
<p style="text-align: right;">36</p> <p>1 it's ethical or not ethical to inquire into a</p> <p>2 potential sexual relationship with a client?</p> <p>3 A That is an answer. By definition, it is an ethical</p> <p>4 violation.</p> <p>5 Q Okay.</p> <p>6 A To -- not to inquire into, but to have a sexual</p> <p>7 relationship with. That's -- that's the rule, is</p> <p>8 having sexual intercourse with a client.</p> <p>9 Q I see. So as far as you understand the rules in</p> <p>10 the State of Wisconsin, the violation would only</p> <p>11 occur if you had sexual intercourse with the</p> <p>12 client?</p> <p>13 A I'm saying that particular subsection of the rule</p> <p>14 is only violated when there is sexual intercourse</p> <p>15 between a client and an attorney, yes.</p> <p>16 Q And what subsection are you talking about?</p> <p>17 A I don't know.</p> <p>18 Q Is there any subsection of the rules of ethics that</p> <p>19 you're aware of that would preclude a lawyer from</p> <p>20 soliciting a sexual relationship with a client,</p> <p>21 whether or not they had intercourse?</p> <p>22 A I don't know. Hypothetically, which is what you</p> <p>23 were asking me, I don't know.</p> <p>24 Q Let me show what I've marked as Exhibit 1. I'll</p> <p>25 give you a copy, Ted. Have you ever seen Exhibit</p>	<p style="text-align: right;">38</p> <p>1 to do that if you're interested.</p> <p>2 Q Sure.</p> <p>3 A Xanax and Ambien were the two benzodiazepines that</p> <p>4 I had become dependent upon. There was also, if I</p> <p>5 can just complete the diagnosis, misuse of opiates,</p> <p>6 Vicodin.</p> <p>7 Q And this would have been a program you entered on</p> <p>8 September 21st of 2010?</p> <p>9 A Yes.</p> <p>10 Q And you would have entered this program after you</p> <p>11 learned that the texts which you had sent to my</p> <p>12 client had become public knowledge?</p> <p>13 A I understood those became public on the 15th of</p> <p>14 September. So in time, yes, it was after. I mean,</p> <p>15 if that's what you're asking. Was it after? Yes.</p> <p>16 Q I think that's just what I asked you. I said you</p> <p>17 went into the treatment program after you knew that</p> <p>18 these texts, which you had sent to my client, had</p> <p>19 been released to the public, correct?</p> <p>20 A Right. It was also after the 4th of July, but --</p> <p>21 your suggestion, I suppose, is that those two are</p> <p>22 linked somehow, that those events are somehow</p> <p>23 linked. It was the 21st, which is after the 15th</p> <p>24 of September, yes.</p> <p>25 Q Correct. I don't know what you mumbled in terms of</p>

<p style="text-align: right;">39</p> <p>1 what I didn't ask, but you said something about the</p> <p>2 4th of July. What are you mumbling about there?</p> <p>3 What did you say about the 4th of July?</p> <p>4 A You asked, was it after these texts became public?</p> <p>5 Yes. It was also after the 4th of July.</p> <p>6 Q Okay.</p> <p>7 A I didn't know if you're suggesting those two are</p> <p>8 related.</p> <p>9 Q Did the 4th of July cause you to enter the program</p> <p>10 you entered on the 21st?</p> <p>11 A It did not, nor did the release of these text</p> <p>12 messages.</p> <p>13 Q Had you participated in any such program as the one</p> <p>14 you entered on the 21st, prior to the 21st?</p> <p>15 A I had not.</p> <p>16 Q During the course of your treatment in the program</p> <p>17 that you entered on the 21st, did you discuss the</p> <p>18 text messages that you sent to my client?</p> <p>19 A Yes.</p> <p>20 Q And during the course of that treatment, did you</p> <p>21 offer an explanation as to why you had sent those</p> <p>22 messages to my client?</p> <p>23 A I was -- I don't think so. I was in a poor</p> <p>24 position to know why I had sent them.</p> <p>25 Q I'm not interested in whether you were in a poor</p>	<p style="text-align: right;">41</p> <p>1 Q Okay. Could you have introduced them into your</p> <p>2 hearing if you wanted to?</p> <p>3 A I could have, sure.</p> <p>4 Q You could have introduced them as potential --</p> <p>5 potentially relating to the mitigation in terms of</p> <p>6 whatever penalty they would recommend for the</p> <p>7 offenses to which you pled no contest?</p> <p>8 A If I decided to disclose those records, I could</p> <p>9 have at that hearing.</p> <p>10 Q Who represented you during that hearing?</p> <p>11 A During that hearing, I represented myself.</p> <p>12 Q Okay.</p> <p>13 A I was represented earlier in the process by</p> <p>14 counsel.</p> <p>15 Q Well, you did disclose those records to the OLR</p> <p>16 prior to the hearing, correct?</p> <p>17 A That's correct.</p> <p>18 Q Let's just track that back. And in fact, let's</p> <p>19 talk a little bit about where -- let's go back to</p> <p>20 the texts and what happened after the texts. When</p> <p>21 did you first become aware that my client had</p> <p>22 received, or was claiming that she had received</p> <p>23 texts from you that contained some sort of</p> <p>24 inappropriate references?</p> <p>25 A I think it was the 3rd of November. It might have</p>
<p style="text-align: right;">40</p> <p>1 position. My only question to you was: Did you,</p> <p>2 during the course of that treatment, explain why it</p> <p>3 was that you sent them or not, to your</p> <p>4 recollection?</p> <p>5 A It's not "yes" or "no," Mr. Fox.</p> <p>6 Q Did you raise the treatment that you received on</p> <p>7 the 21st in any way during the course of the --</p> <p>8 part of the OLR proceeding you've described as a</p> <p>9 hearing?</p> <p>10 A Yes. I told them of my treatment. Yes.</p> <p>11 Q And did you introduce your treatment records into</p> <p>12 that hearing?</p> <p>13 A No.</p> <p>14 Q And why not?</p> <p>15 A They had been sent earlier to the OLR as part of</p> <p>16 consideration of an alternate disposition for the</p> <p>17 underlying causes of the behavior that was</p> <p>18 complained of. In other words, OLR had asked for</p> <p>19 those treatment records when deciding whether I</p> <p>20 would be afforded the same programs that cocaine</p> <p>21 addicted or alcohol dependent lawyers are when they</p> <p>22 involve themselves in behavior. So they asked for</p> <p>23 those as part of that decision, not as part of this</p> <p>24 hearing at all. This hearing never received my</p> <p>25 treatment records.</p>	<p style="text-align: right;">42</p> <p>1 been the 2nd, but 3rd of November of '09.</p> <p>2 Q '09. And how did you receive that information?</p> <p>3 A I was called by two members of the Wisconsin</p> <p>4 Department of Justice.</p> <p>5 Q And who were they?</p> <p>6 A Kevin Potter and Roy Korte. A conference call.</p> <p>7 Q And what did they say to you?</p> <p>8 A They told me that a complaint had been made to law</p> <p>9 enforcement that was being investigated. They gave</p> <p>10 me the general nature of the complaint, the person</p> <p>11 that was involved. And the purpose of the call was</p> <p>12 to alert me that a criminal investigation had been</p> <p>13 commenced and that this woman had now indicated the</p> <p>14 communication between she and I was unwanted or</p> <p>15 unwelcomed.</p> <p>16 Q And that --</p> <p>17 A I'm sorry. I took -- the very first issue that had</p> <p>18 to be addressed was my continued involvement in the</p> <p>19 prosecution, and whether a special prosecutor</p> <p>20 needed to be appointed on the case.</p> <p>21 Q This is what Potter's saying to you?</p> <p>22 A This is what I said to them.</p> <p>23 Q Okay.</p> <p>24 A It was my --</p> <p>25 Q My question -- let's try to stick to the question</p>

<p style="text-align: right;">43</p> <p>1 that I asked, and then I'll move onto the question</p> <p>2 you might want to answer a little bit later. I</p> <p>3 just asked what Potter said to you. And so I want</p> <p>4 to make sure I understand the answer. You're</p> <p>5 familiar with this drill. You've been through it a</p> <p>6 number of times. You've tried many cases. All I</p> <p>7 want to know is what he said to you.</p> <p>8 A Well, then don't invite me to go ahead.</p> <p>9 Q I didn't invite you to go ahead. I said: What did</p> <p>10 Potter say to you?</p> <p>11 A I understood that they told me about the</p> <p>12 circumstances surrounding the complaint.</p> <p>13 Q And they told you that my client found the texts</p> <p>14 that you sent to her to be unwanted?</p> <p>15 A I don't know if they used those words, but that she</p> <p>16 had made a complaint to law enforcement and an</p> <p>17 investigation was being commenced.</p> <p>18 Q Did they identify the law enforcement agency to</p> <p>19 which she made the complaint?</p> <p>20 A I don't know that they did. They said DCI was</p> <p>21 going to do the investigation.</p> <p>22 Q Did they tell you anything else other than that my</p> <p>23 client had complained about texts that you had sent</p> <p>24 to her and that DCI was going to do an</p> <p>25 investigation of you for a potential criminal</p>	<p style="text-align: right;">45</p> <p>1 A Pete, I think it's Theilen, T-H-E-I-L-E-N, or</p> <p>2 something like that. I called him and asked what</p> <p>3 the status of the investigation was, and if he</p> <p>4 needed to interview me as part of that</p> <p>5 investigation, that I wanted to make myself</p> <p>6 available to him.</p> <p>7 Q So you wanted to be cooperative?</p> <p>8 A Yes.</p> <p>9 Q Did he interview you?</p> <p>10 A He did not. He told me that the investigation was</p> <p>11 concluded and that he had made his charging</p> <p>12 recommendation decision.</p> <p>13 Q Did he tell you what that was?</p> <p>14 A Yes.</p> <p>15 Q What did he say?</p> <p>16 A He told me there is no criminal behavior implicated</p> <p>17 here.</p> <p>18 Q And approximately, when did Mr. Theilen convey that</p> <p>19 to you?</p> <p>20 A I don't recall. Sometime after the 3rd. I don't</p> <p>21 know.</p> <p>22 Q After November 3rd?</p> <p>23 A Yes.</p> <p>24 Q Before the end of the year?</p> <p>25 A Within -- within 48 hours, I'm sure, Mr. Fox.</p>
<p style="text-align: right;">44</p> <p>1 violation with regard to something?</p> <p>2 A I don't believe they said anything else.</p> <p>3 Q Okay. And what did you -- if you did understand,</p> <p>4 what did you understand the criminal investigation</p> <p>5 would involve?</p> <p>6 A I didn't know.</p> <p>7 Q Okay. What did you say to them?</p> <p>8 A I asked them what the criminal investigation</p> <p>9 involved.</p> <p>10 Q And what did they say?</p> <p>11 A They said they didn't know at this point.</p> <p>12 Q What else did you say to them in that conversation?</p> <p>13 A I told them that a special prosecutor needed to be</p> <p>14 appointed on the case and that I informed them that</p> <p>15 I was immediately taking myself off of the</p> <p>16 prosecution of Mr. Konitzer's case.</p> <p>17 Q And what was the next communication you had</p> <p>18 concerning these messages, or the propriety of your</p> <p>19 conduct, after that conversation you've just</p> <p>20 described?</p> <p>21 A I don't know. I don't know what came next.</p> <p>22 Q What is the next conversation you remember?</p> <p>23 A I remember a conversation with the lead</p> <p>24 investigator in the case from DCI.</p> <p>25 Q Who was that?</p>	<p style="text-align: right;">46</p> <p>1 Q What was the next communication, if any, that you</p> <p>2 can recall with regard to your having sent these</p> <p>3 texts to my client?</p> <p>4 A I recall a series of communications with the</p> <p>5 Department of Justice employees, most particularly</p> <p>6 Kevin Potter, head of -- I think it's legal</p> <p>7 services. It's whatever the boss of criminal lit</p> <p>8 is. Kevin and I were discussing the potential</p> <p>9 public reaction should these text messages be, I</p> <p>10 think the word he used was "leaked" to the media.</p> <p>11 Kevin expressed -- these are</p> <p>12 communications between -- after I talked to Pete</p> <p>13 and before the 3rd of December. So really, through</p> <p>14 much of November, it was Kevin's opinion that a</p> <p>15 report needed to be made to the Office of Lawyer</p> <p>16 Regulation.</p> <p>17 Q And did you agree that needed to be done?</p> <p>18 A Eventually, I did, yes. At first, I did not.</p> <p>19 Q Okay. What did you say at first?</p> <p>20 A At first, I asked Mr. Potter to identify what rule</p> <p>21 had been violated. He was unable to do that, and</p> <p>22 he told me, "I'm unable to do that." He said, "I</p> <p>23 don't know if there's any rule violation, but that</p> <p>24 should be up to the Office of Lawyer Regulation."</p> <p>25 Q Okay. And approximately, when did you have this</p>

<p style="text-align: right;">47</p> <p>1 conversation with Potter in relation to November</p> <p>2 3rd? Before the end of the year?</p> <p>3 A Before the 3rd of December. Because eventually, I</p> <p>4 made a self-report to the Office of Lawyer</p> <p>5 Regulation. I think it was on the 4th of December.</p> <p>6 Q And did anybody else urge you to self-report</p> <p>7 between the time that Mr. Potter initially</p> <p>8 suggested it and the time that you decided to do</p> <p>9 it?</p> <p>10 A I remember asking several of my peers, prosecutors,</p> <p>11 and members at the AG's office, and former members</p> <p>12 of the AG's office, that, given this fact scenario,</p> <p>13 is there a violation of the rules of professional</p> <p>14 responsibility, No. 1, in their opinion, and No. 2,</p> <p>15 did they believe that I should self-report? I was</p> <p>16 asking for advice from my peers. I think there</p> <p>17 were six or eight of them that I shared the facts</p> <p>18 of this case with and asked for their opinion.</p> <p>19 Q And who were the six or eight with whom you shared</p> <p>20 the facts of this case?</p> <p>21 A Do you want the names of them?</p> <p>22 Q I do.</p> <p>23 A Doug Haag, H-A-A-G, former head of criminal</p> <p>24 litigation at DOJ.</p> <p>25 Q Was he working for DOJ at the time you shared this</p>	<p style="text-align: right;">49</p> <p>1 from Mr. Theilen the actual text messages, or at</p> <p>2 least the -- some version, some written version of</p> <p>3 those messages, and I may have shared them as email</p> <p>4 attachments with one or more than one of these</p> <p>5 people. If I didn't, I certainly described for</p> <p>6 each of them the nature of these text messages.</p> <p>7 Q Well, I understand you may have described for them.</p> <p>8 I'm really only interested --</p> <p>9 A I did.</p> <p>10 Q -- in whether you, in fact, let them read them for</p> <p>11 themselves. And you can testify you did or did</p> <p>12 not.</p> <p>13 A I don't recall.</p> <p>14 Q All right. So when you were asking -- and by the</p> <p>15 way, when you were talking with these individuals,</p> <p>16 Mr. Kratz, you did have the cell phone on which</p> <p>17 these text messages were recorded, right?</p> <p>18 A I'm sorry? I had the cell phone? I don't believe</p> <p>19 I had -- in fact, I'm sure I had not retained those</p> <p>20 text messages. I had the phone. Once text</p> <p>21 messages are deleted, it is virtually impossible to</p> <p>22 resurrect them in cell phones.</p> <p>23 Q Really? And who told you that?</p> <p>24 A All kinds of forensic officers because that was</p> <p>25 very important to me, to resurrect these. It's</p>
<p style="text-align: right;">48</p> <p>1 with him?</p> <p>2 A I don't believe he was. He's retired. Dave</p> <p>3 Wambach, who was working for criminal litigation.</p> <p>4 Dave Perlman, who was working for the Department of</p> <p>5 Justice at the time. Jim Camp, C-A-M-P, who was</p> <p>6 the DA of Green Lake County at the time.</p> <p>7 Q Why did you approach Mr. Camp?</p> <p>8 A Same reason. I was asking for advice from my</p> <p>9 peers.</p> <p>10 Q Was he a person you knew from prior contact?</p> <p>11 A Yes. These are all my peers, or at least were</p> <p>12 close friends within the prosecution community.</p> <p>13 Q Did Mr. Camp testify for you?</p> <p>14 A He did not. Mr. Wambach did at the sanctions</p> <p>15 hearing.</p> <p>16 Q I see. Okay.</p> <p>17 A Eric Peterson, also was in criminal litigation at</p> <p>18 the time. Tom Fallon, also an attorney at criminal</p> <p>19 lit at the time, and there may have been one or two</p> <p>20 others. They would either be elected DAs or</p> <p>21 somebody at the AG's office. They were all asked</p> <p>22 their opinion.</p> <p>23 Q Did you show any of these individuals the text</p> <p>24 messages which you had sent to my client?</p> <p>25 A I may have. I think, by that time, I had received</p>	<p style="text-align: right;">50</p> <p>1 almost impossible, given how they're stored -- not</p> <p>2 that you need to know all this, but it's in these</p> <p>3 giant servers in your phone company. That's where</p> <p>4 text messages are stored. And so to resurrect</p> <p>5 those is virtually impossible. That's what I was</p> <p>6 told.</p> <p>7 Q Okay. Who told you that?</p> <p>8 A I don't know. I don't recall.</p> <p>9 Q When did they tell you that in relation to the text</p> <p>10 messages we're talking about here, the ones that</p> <p>11 were sent to my client?</p> <p>12 A Much after the fact.</p> <p>13 Q Okay.</p> <p>14 A When I tried to resurrect them later. It would</p> <p>15 have been after -- it would have been after</p> <p>16 November of 2010. So really, more than a year</p> <p>17 later, I inquired about resurrecting text messages.</p> <p>18 Q Okay. I'm more interested in what happened at the</p> <p>19 time that you were told that you had sent</p> <p>20 inappropriate text messages, or at least from the</p> <p>21 standpoint of my client --</p> <p>22 A I didn't still have them on my phone. I had</p> <p>23 deleted them. I told you that.</p> <p>24 Q Why?</p> <p>25 A Because I'm in the habit of deleting all my text</p>

<p style="text-align: right;">51</p> <p>1 messages.</p> <p>2 Q Why?</p> <p>3 A Storage. The numbers of text messages that I would</p> <p>4 have on my phone would be large.</p> <p>5 Q So your -- you were told on or about November 3rd</p> <p>6 that you -- a person who was a victim of domestic</p> <p>7 abuse had complained about text messages that you</p> <p>8 had sent to her, correct?</p> <p>9 A In October, yes.</p> <p>10 Q Right. In October. And by that time, by November</p> <p>11 3rd, you had deleted them from your phone?</p> <p>12 A Absolutely.</p> <p>13 Q Pursuant to your usual and customary practice, in</p> <p>14 order to facilitate the storage capacity of your</p> <p>15 telephone?</p> <p>16 A That's correct.</p> <p>17 Q Do you still have that phone?</p> <p>18 A I may. The reason I say that is I have boxes of</p> <p>19 old junk drawers, and it may be in there.</p> <p>20 Q Well, if it is, I would ask that it be preserved</p> <p>21 because I'll subpoena it.</p> <p>22 And the -- so as I understand it, since</p> <p>23 you had already deleted those text messages --</p> <p>24 well, strike that.</p> <p>25 You talked to a number of individuals and</p>	<p style="text-align: right;">53</p> <p>1 We think you ought to report this to OLR?</p> <p>2 A Yeah. The other part of that decision is</p> <p>3 Mr. Potter said, "If you don't, we're going to."</p> <p>4 "We" meaning DOJ. They believed they had a</p> <p>5 parallel responsibility to see that matter</p> <p>6 reported.</p> <p>7 Q Are you familiar with that responsibility?</p> <p>8 A I am. If they believed that there was a specific</p> <p>9 violation, hence my request of them to identify</p> <p>10 that for me please. Identify the violation.</p> <p>11 That's how that conversation occurred. He was</p> <p>12 unable -- and still to this day, nobody from DOJ,</p> <p>13 to me at least, has identified a specific rule</p> <p>14 violation.</p> <p>15 Q When is the last time you talked to somebody from</p> <p>16 DOJ with regard to whether or not they could</p> <p>17 identify whether there was a specific rule</p> <p>18 violation?</p> <p>19 A Sometime before March of 2010 when OLR dismissed</p> <p>20 the grievance.</p> <p>21 Q Okay.</p> <p>22 A That's the last time I believed that question was</p> <p>23 up for discussion.</p> <p>24 Q And with whom did you discuss it in March of 2010?</p> <p>25 A I don't know. I'm saying, up to that point it was</p>
<p style="text-align: right;">52</p> <p>1 gave, at least, your descriptions of what it was</p> <p>2 you were accused of doing to these other people who</p> <p>3 had experience in prosecution, and they indicated</p> <p>4 they didn't think there was anything unethical</p> <p>5 about what you had done; is that correct?</p> <p>6 A No, that's not correct.</p> <p>7 Q Did any of them indicate that you had behaved</p> <p>8 unethically?</p> <p>9 A Inappropriately. I don't know that they attributed</p> <p>10 any ethical violation to it, nor did they think it</p> <p>11 mattered. I think that was the consensus. That</p> <p>12 whether there is or not, that I should self-report</p> <p>13 to OLR. Self-report the behavior to OLR for their</p> <p>14 determination of whether it's an ethical violation.</p> <p>15 Q So the individuals, eight or so individuals you</p> <p>16 have identified for me to whom you gave your</p> <p>17 description of what you had done, suggested that</p> <p>18 you self-report to OLR?</p> <p>19 A I think that was the consensus, yes.</p> <p>20 Q Okay. And you also think that, at least the</p> <p>21 consensus was, that you had done nothing unethical,</p> <p>22 amongst these folks?</p> <p>23 A I don't think I said that.</p> <p>24 Q Okay. There wasn't a consensus as to what you had</p> <p>25 done ethically or not ethically. They were saying,</p>	<p style="text-align: right;">54</p> <p>1 certainly with Mr. Potter. It was with Roy Korte.</p> <p>2 It may have -- and I know that I copied at least</p> <p>3 some of this correspondence to the deputy, attorney</p> <p>4 general, as well as Mr. Van Hollen himself.</p> <p>5 Q And did you ever -- by the way, did you ever show</p> <p>6 these actual texts to Doug Haag?</p> <p>7 A I don't know if I have or not.</p> <p>8 Q Did Doug think the types of texts -- well, I don't</p> <p>9 know. I guess he didn't see your texts, but by the</p> <p>10 way you were describing them, did he suggest to you</p> <p>11 he thought that was a good idea?</p> <p>12 A I don't recall what Doug said. I don't. He</p> <p>13 thought it was a good idea I self-report.</p> <p>14 Q Okay. So what I'm trying to figure out, between</p> <p>15 the conversation that you had with Potter, the</p> <p>16 initial one that you described, and then March 2010</p> <p>17 when you said OLR dismissed the --</p> <p>18 A Grievance?</p> <p>19 Q Grievance.</p> <p>20 A March 5th, they authored a letter.</p> <p>21 Q Right. Between that time, you had additional</p> <p>22 conversations with either Potter or Korte where you</p> <p>23 asked them to identify what specific violation they</p> <p>24 thought you were potentially guilty of, ethical</p> <p>25 violation, and they wouldn't identify that for you?</p>

<p style="text-align: right;">55</p> <p>1 A I think that's true.</p> <p>2 Q And how many times did you have such conversations</p> <p>3 with them?</p> <p>4 A I don't know. And by "conversations," I'm quite</p> <p>5 certain they would have been electronic in nature.</p> <p>6 Email messages.</p> <p>7 Q At any time after that time, meaning after March</p> <p>8 5th of 2010, did Mr. Potter, to your knowledge, get</p> <p>9 involved in asking the OLR to reopen your case?</p> <p>10 A Yes.</p> <p>11 Q And did he do so, to your knowledge, thinking that</p> <p>12 he didn't know one way or the other whether or not</p> <p>13 he thought you had committed any specific ethical</p> <p>14 violations?</p> <p>15 A Are you asking my opinion why he did it or not?</p> <p>16 Q Did you see any correspondence from him requesting</p> <p>17 that the OLR case be reopened?</p> <p>18 A Eventually I did, yes.</p> <p>19 Q You did. And in that correspondence, did you see</p> <p>20 that he identified for the OLR what he thought to</p> <p>21 be specific violations that should be investigated</p> <p>22 concerning your conduct?</p> <p>23 A Yes. He identified potential violations. That's</p> <p>24 correct.</p> <p>25 Q And are they not -- at least among the potential</p>	<p style="text-align: right;">57</p> <p>1 A Yes.</p> <p>2 Q And who did you believe was responsible for the</p> <p>3 reopening of that case?</p> <p>4 A The director, Mr. Sellen.</p> <p>5 Q This would be Keith Sellen?</p> <p>6 A Yes.</p> <p>7 Q And why do you believe he was responsible for</p> <p>8 reopening the case?</p> <p>9 A Because he said so in a press release. He said,</p> <p>10 "I've decided to reopen and reconsider the</p> <p>11 dismissed grievance."</p> <p>12 Q And did you believe that was somehow unfair to you?</p> <p>13 A Yes.</p> <p>14 Q And why?</p> <p>15 A It's the first time the OLR had reopened and</p> <p>16 reconsidered a dismissed grievance of any kind</p> <p>17 without an additional allegation of misconduct by a</p> <p>18 lawyer. It was in response, in my opinion, to the</p> <p>19 intense media frenzy that followed the leak of the</p> <p>20 OLR decision to Mr. Foley from the AP sometime</p> <p>21 before the 15th of September of 2010.</p> <p>22 Q And did you ever have a belief as to who was</p> <p>23 responsible for what you have characterized as a</p> <p>24 leak?</p> <p>25 A There were only three or four entities that knew of</p>
<p style="text-align: right;">56</p> <p>1 violations he identified, are they not three of the</p> <p>2 violations to which you pleaded no contest?</p> <p>3 A I'm not sure. I know that they were among them,</p> <p>4 yes.</p> <p>5 Q Well, let's move -- you say that the grievance was</p> <p>6 dismissed in March of 2010, at least initially.</p> <p>7 Did you know whether or not Ms. -- my client was</p> <p>8 represented by counsel at all in terms of supplying</p> <p>9 information in support of her grievance?</p> <p>10 A I don't know. I don't know the -- she eventually</p> <p>11 filed her own grievance. This is separate and</p> <p>12 distinct from my self-report.</p> <p>13 Q I understand.</p> <p>14 A So both of those were resolved in the same</p> <p>15 correspondence of March 5th.</p> <p>16 Q Both of them were dismissed by the initial</p> <p>17 investigator at the OLR level, right?</p> <p>18 A Yes.</p> <p>19 Q Do you know what an initial investigator is at the</p> <p>20 OLR level?</p> <p>21 A Absolutely.</p> <p>22 Q Is that person an attorney?</p> <p>23 A I don't know.</p> <p>24 Q Okay. And that case was eventually reopened, the</p> <p>25 OLR case, right?</p>	<p style="text-align: right;">58</p> <p>1 its existence. My opinion was it had to be</p> <p>2 somebody from within that group.</p> <p>3 Q And what groups are you talking about, or group?</p> <p>4 A The only people that knew about it was me, your</p> <p>5 client, or her retained counsel.</p> <p>6 Q Who was her retained counsel at the time that the</p> <p>7 news story came out?</p> <p>8 A If we believe her responses to interrogatories, it</p> <p>9 was you.</p> <p>10 Q At the time the news story came out?</p> <p>11 A She says she directed all media inquiries to you,</p> <p>12 Mr. Fox. That's the only reason I say that.</p> <p>13 Q Oh.</p> <p>14 A That's her interrogatory answer. The other --</p> <p>15 Q Oh. We'll have to amend that.</p> <p>16 A The other group that I'm talking --</p> <p>17 Q I didn't even know about it.</p> <p>18 A The other group that I'm talking about is somebody</p> <p>19 within the Department of Justice.</p> <p>20 Q So you think I might have leaked this?</p> <p>21 A I don't know. Are you asking me, if you would have</p> <p>22 known about it, would you have a reason to? Sure.</p> <p>23 You gave your own little press conferences after</p> <p>24 that, Mr. Fox.</p> <p>25 Q Oh, I did? Okay.</p>

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1 **A** You did, didn't you? I saw you on TV, despite your
 2 client's claim she doesn't want any media
 3 attention.
 4 **Q** Right. That strikes you as odd, doesn't it?
 5 **A** It certainly does.
 6 **Q** And is there anything -- when you teach the
 7 prosecution of domestic abuse cases, do you talk at
 8 all about the desire of domestic abuse victims for
 9 privacy?
 10 **A** No. My expertise was not in domestic violence
 11 prosecutions. I think I mentioned if I ever taught
 12 that, it was in the course of training in a
 13 larger -- it's what's called "new prosecutor
 14 training." I was assigned by DOJ to teach all the
 15 newly elected DAs and had for eight or ten years.
 16 **Q** And are you aware of anybody else talking about the
 17 desire for privacy of domestic abuse victims?
 18 **A** Not any more than any other victims, no, sir.
 19 **Q** Okay. Are you aware of any teaching about the
 20 desire of any victims for privacy?
 21 **A** Sure. The concept of revictimization is what --
 22 **Q** What's that?
 23 **A** It's when victims don't ask to be involved in the
 24 criminal justice process, yet they are, either
 25 through publicity in the case or otherwise, subject

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1 to attention, unwanted attention. And usually,
 2 that happens in sexual assault cases. Certainly
 3 cases involving children is where the
 4 revictimization issue comes up most often.
 5 **Q** Do you ever use or recommend the use of initials in
 6 the prosecution of cases, criminal cases of some
 7 sort?
 8 **A** I have.
 9 **Q** Domestic abuse cases ever?
 10 **A** Almost never.
 11 **Q** Sexual assault cases?
 12 **A** Almost always.
 13 **Q** By the way, how many of the press conferences, as
 14 you've described them, that I held, did you see?
 15 **A** I don't recall.
 16 **Q** Five?
 17 **A** I don't know, sir.
 18 **Q** Less than ten?
 19 **A** I don't know.
 20 **Q** Less than a hundred?
 21 **A** You're a handsome man. I would have remembered.
 22 **Q** You mean you would have remembered if I had a
 23 hundred?
 24 **A** Yes, I would have remembered that.
 25 **Q** All right.

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1 MR. TORNEHL: Off the record.
 2 (Short recess.)
 3 BY MR. FOX:
 4 **Q** You had identified -- well, you hadn't identified
 5 yet Exhibit 1. Why don't you identify that for us
 6 for the record?
 7 **A** Exhibit 1 is a letter dated September 17th, 2010.
 8 I don't know who authored it, but it appears to
 9 reflect a resolution of the executive committee of
 10 the Wisconsin DA's Association.
 11 **Q** Is the executive committee identified on the
 12 letter?
 13 **A** Well --
 14 **Q** It doesn't appear so. Did you know who the
 15 executive committee was?
 16 **A** The exec board is -- it's the people on the left
 17 side of the letterhead. I know that to be the exec
 18 board because I was a former president of the DA's
 19 Association.
 20 **Q** Okay. And you receive a letter on September 17th,
 21 2010, and that letter, as you said -- you did not
 22 say you received it. You said you first saw it in
 23 November of 2010, right?
 24 **A** Right. I knew of its existence in September, on
 25 September 17th.

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1 **Q** How did you know of its existence?
 2 **A** Media reports.
 3 **Q** Okay.
 4 **A** Mr. Dufour, president-elect, had given an interview
 5 to the media about their action, and this letter
 6 had been provided to media outlets again before --
 7 well before I had ever received it.
 8 **Q** And --
 9 **A** And I know that because I got called at the office
 10 on the 17th asking me to comment about it, and I
 11 didn't have the letter in front of me. I was
 12 irritated about that.
 13 **Q** You had calls at the office on the --
 14 **A** 17th.
 15 **Q** The 17th?
 16 **A** About this letter. I got calls about this letter.
 17 The media had it in their hands, and I didn't have
 18 it yet.
 19 **Q** And when did you enter treatment?
 20 **A** The 21st.
 21 **Q** I see.
 22 **A** The 17th was a Friday. I actually was on a plane
 23 on the 20th, on Sunday the 20th.
 24 **Q** When did you first contact this -- where did you go
 25 for rehabilitation?

<p style="text-align: right;">63</p> <p>1 A Hattiesburg, Mississippi.</p> <p>2 Q And when did you first contact this facility?</p> <p>3 A On the 20th.</p> <p>4 Q Of September?</p> <p>5 A Yes.</p> <p>6 Q So you contacted them after you heard about this</p> <p>7 letter? I'm just saying, after?</p> <p>8 A Yes. They were contacted after this letter was</p> <p>9 authored, yes.</p> <p>10 Q After the letter was authored, and after you heard</p> <p>11 media comment about the fact that the letter had</p> <p>12 been authored?</p> <p>13 A That's right.</p> <p>14 Q And after you heard media comment about the content</p> <p>15 of the letter, and the criticism that was levied</p> <p>16 against you for engaging in this series of text</p> <p>17 messages with my client?</p> <p>18 A That's all correct, yes.</p> <p>19 Q Okay. And what was it that propelled you or</p> <p>20 spurred you or gave you the impetus to contact</p> <p>21 Hattiesburg on the 20th?</p> <p>22 A Well, I didn't. I contacted a psychologist friend</p> <p>23 of mine on the 20th, Dr. Frank Cummings. On the</p> <p>24 morning of the 20th of September, I had thoughts of</p> <p>25 suicide.</p>	<p style="text-align: right;">65</p> <p>1 Information that had been leaked from the Office of</p> <p>2 Lawyer Regulation decision was all accurate</p> <p>3 information. The actual -- the actual text</p> <p>4 messages themselves, having been reported at or</p> <p>5 about that time, were all accurate.</p> <p>6 Q So what, in your mind, caused you the distress to</p> <p>7 make you suicidal? The messages, or the fact -- or</p> <p>8 the way they were reported?</p> <p>9 A Well, really, the consequence upon me, upon my</p> <p>10 reputation, upon my career. The -- what was, I</p> <p>11 believed, the series of direct results from that</p> <p>12 disclosure. It was a lot in a couple-day period to</p> <p>13 absorb and to emotionally deal with.</p> <p>14 Q Did you believe that the messages themselves did</p> <p>15 anything to undercut your public image?</p> <p>16 A Yes, absolutely.</p> <p>17 Q And why?</p> <p>18 A They were inappropriate.</p> <p>19 Q In what way?</p> <p>20 A They were insensitive. There's a number of ways</p> <p>21 that they were inappropriate. They were, I think,</p> <p>22 crass. I think they were certainly not befitting</p> <p>23 either somebody who held the position that I held,</p> <p>24 or from me, personally, or my background,</p> <p>25 especially as it relates to my work with crime</p>
<p style="text-align: right;">64</p> <p>1 Q Okay. And what -- and what was the reason for your</p> <p>2 thoughts of suicide?</p> <p>3 A The media attention that had been in existence</p> <p>4 between the 15th and 20th.</p> <p>5 Q Okay.</p> <p>6 A So it was -- it was the -- I'll call it the</p> <p>7 "firestorm." The media firestorm that was in</p> <p>8 existence at the time, directly related to me.</p> <p>9 Q Directly related to you?</p> <p>10 A Yes, sir.</p> <p>11 Q And that -- was anything incorrectly reported about</p> <p>12 your behavior in that media firestorm?</p> <p>13 A Sure.</p> <p>14 Q What was incorrectly reported about your behavior?</p> <p>15 A From the very first headline and the very first</p> <p>16 article when they used the term "sexting," it</p> <p>17 mischaracterized my behavior.</p> <p>18 Q Okay.</p> <p>19 A And I believed that much of the reporting, much of</p> <p>20 the comment, much of what's in this letter, much of</p> <p>21 the criticism that was levied against me, was based</p> <p>22 upon inaccurate information about what behavior I</p> <p>23 had actually engaged in.</p> <p>24 Q Okay.</p> <p>25 A That having been said, much of it, certainly the</p>	<p style="text-align: right;">66</p> <p>1 victims.</p> <p>2 Q Let's talk about that.</p> <p>3 A And so -- go ahead.</p> <p>4 Q I want to know that. What is it about her being a</p> <p>5 crime victim in the situation you have testified</p> <p>6 to, which is that you knew her to have been a -- or</p> <p>7 believed her to have been a victim of domestic</p> <p>8 abuse whose boyfriend had attempted to strangle</p> <p>9 her.</p> <p>10 A Yes.</p> <p>11 Q What, if any, context did that give those</p> <p>12 particular text messages that made them more or</p> <p>13 less negative?</p> <p>14 A Well, you're asking me about -- on reflection, why</p> <p>15 was it that her being a crime victim was so</p> <p>16 distressing to me? Or are you asking something</p> <p>17 else, Mr. Fox?</p> <p>18 Q Well, let me try to clarify. What I'm trying to</p> <p>19 get is your thinking with regard to what makes her</p> <p>20 different than anybody else in terms of what you</p> <p>21 would anticipate her reaction would be to your</p> <p>22 messages? Meaning, as a crime victim, as a person</p> <p>23 who had come to you as a DA to prosecute somebody</p> <p>24 she believed had attempted to strangle her to</p> <p>25 death.</p>

<p style="text-align: right;">67</p> <p>1 A My personal reaction about her being a crime victim</p> <p>2 was more a function of the work that I've done and</p> <p>3 had done up to that point, really, in my 25 years</p> <p>4 of professional life. But more specifically, the</p> <p>5 12 years that I've been the chairman of the Crime</p> <p>6 Victim's Rights Board. And so her status as a</p> <p>7 crime victim was particularly distressing to me.</p> <p>8 And, in fact, it was -- when I was first</p> <p>9 alerted to this on the 3rd of November 2009, I</p> <p>10 mentioned that to Mr. Porter and to Mr. Korte, the</p> <p>11 fact that she was a crime victim and that she was</p> <p>12 complaining about me was very distressing. In</p> <p>13 fact, I used the word "mortified" on that day.</p> <p>14 Q I understand you may be mortified for one thing.</p> <p>15 You may be mortified that she's complaining about</p> <p>16 you as -- what you perceive yourself to be, an</p> <p>17 advocate for crime victims, right? That was</p> <p>18 mortifying to you, right?</p> <p>19 A Yes.</p> <p>20 Q Let's look at her side. As a crime victim, did you</p> <p>21 understand that she was likely to be more</p> <p>22 vulnerable to the types of communications that you</p> <p>23 sent to her as a victim of domestic abuse than</p> <p>24 somebody who was not?</p> <p>25 A No.</p>	<p style="text-align: right;">69</p> <p>1 factually correct that these kinds of victims are</p> <p>2 generally more vulnerable to the types of</p> <p>3 communications that you made to my client, what's</p> <p>4 your database for that?</p> <p>5 A My 25 years of experience.</p> <p>6 Q And what types of statistical analysis have you</p> <p>7 done and/or published concerning your 25 years of</p> <p>8 experience which suggests that somebody who was</p> <p>9 reliant on you for a domestic abuse prosecution is</p> <p>10 not more vulnerable to the types of communications</p> <p>11 you sent to her? What's your base for that?</p> <p>12 A Anecdotal only.</p> <p>13 Q Do you have any scientific base at all for that?</p> <p>14 A No, and I don't know that any exists.</p> <p>15 Q I'm not asking whether any exists.</p> <p>16 A Do I have any? No.</p> <p>17 Q Did you do any kind of a study of people to whom --</p> <p>18 people who receive the kinds of texts that you sent</p> <p>19 to my client, and how they reacted to the types of</p> <p>20 texts that you sent as a prosecutor to my client?</p> <p>21 A What's your question? Is there such a study or am</p> <p>22 I aware of any?</p> <p>23 Q Right.</p> <p>24 A Is there such a study? I'm not aware of any. No.</p> <p>25 Q Okay. Did you do any?</p>
<p style="text-align: right;">68</p> <p>1 Q As a person who was reliant on you to the extent</p> <p>2 she was to prosecute a domestic abuse case against</p> <p>3 the person who attempted to strangle her to death,</p> <p>4 did you believe she was more vulnerable than</p> <p>5 somebody who was not in that position?</p> <p>6 A No. And I can explain why, if you care.</p> <p>7 Q Not yet. Not yet. You'll get all the time in the</p> <p>8 world when you're --</p> <p>9 A No, but it's specific to your client, not to</p> <p>10 victims.</p> <p>11 Q Okay. So let's talk about victims generally</p> <p>12 because you've indicated specific to my client.</p> <p>13 A Okay.</p> <p>14 Q So generally speaking, you would expect that a</p> <p>15 person who had been attacked by a significant other</p> <p>16 who attempted to strangle them to death, who had</p> <p>17 come to you as a district attorney to prosecute a</p> <p>18 criminal case against that strangler, would be</p> <p>19 potentially more vulnerable to communications of</p> <p>20 the type you sent?</p> <p>21 A It depends. That --</p> <p>22 Q I understand.</p> <p>23 A I'm unwilling to make that link at all. That isn't</p> <p>24 -- in fact, it's not factually correct.</p> <p>25 Q Okay. And your database for saying it's not</p>	<p style="text-align: right;">70</p> <p>1 A No.</p> <p>2 Q Okay. Did you send those types of texts to any</p> <p>3 other person who was in the situation of my client,</p> <p>4 who had come to you to prosecute somebody she</p> <p>5 believed had attempted to strangle her to death,</p> <p>6 another comparator, so to speak?</p> <p>7 A Not that I recall.</p> <p>8 Q So your conclusion about how people generally react</p> <p>9 to the types of texts you sent to her is based upon</p> <p>10 a single incident, meaning the incident where you</p> <p>11 sent them to her, which is the only incident you</p> <p>12 know about, right?</p> <p>13 A This is the only fact situation of text messages to</p> <p>14 a crime victim that I was aware of in my</p> <p>15 experience, that's correct.</p> <p>16 Q Great. You've had --</p> <p>17 A But I am aware of how victims generally respond to</p> <p>18 communication, and are they more vulnerable. That,</p> <p>19 I can comment about. Not just text messages.</p> <p>20 Q You've had 25 years of experience as a district</p> <p>21 attorney, and you have never heard in those 25</p> <p>22 years of a single other incident of somebody</p> <p>23 sending the types of text messages to the victim of</p> <p>24 a domestic abuse case that you sent to her,</p> <p>25 correct?</p>

<p style="text-align: center;">71</p> <p>1 A I think text messages have been around for, like,</p> <p>2 five or six years, but --</p> <p>3 Q Could you answer my question?</p> <p>4 A No. Twenty-five years ago, there were no text</p> <p>5 messages.</p> <p>6 MR. FOX: Could you read the question</p> <p>7 back?</p> <p>8 (Last question read.)</p> <p>9 THE WITNESS: That's correct.</p> <p>10 BY MR. FOX:</p> <p>11 Q Okay. And have you heard of anybody, whether it's</p> <p>12 text messages, emails, written communications or</p> <p>13 speeches, have you heard of any other DA speaking</p> <p>14 to the victim of a crime, such as my client, in the</p> <p>15 way that you spoke to her in those text messages?</p> <p>16 A I'm not aware of any, no.</p> <p>17 Q So the basis for your anecdotal conclusion is what?</p> <p>18 A Is the 25 years of talking to crime victims and</p> <p>19 assessing their vulnerability to communication.</p> <p>20 Not text messages, to all communication. That, I</p> <p>21 certainly have anecdotal evidence of.</p> <p>22 Q And well, I'm not interested in that. I'm</p> <p>23 interested in communication --</p> <p>24 A I don't suppose you are, Mr. Fox.</p> <p>25 Q Well, I am interested in communication from a DA.</p>	<p style="text-align: center;">73</p> <p>1 crime victim. That is, to speak directly with a</p> <p>2 crime victim about their feelings about the</p> <p>3 disposition of a case, what they'd like to see</p> <p>4 happen with the case. You have a duty to receive</p> <p>5 from a crime victim their impact statement and</p> <p>6 relay that to the court, if you believe that that</p> <p>7 is something the victim wants to have happen. You</p> <p>8 have obligations in a sentencing scenario to assist</p> <p>9 the victim in providing live testimony at the time</p> <p>10 of sentencing. That is, to provide not just a</p> <p>11 written, but an oral impact statement. You have a</p> <p>12 duty to protect a crime victim from physical harm.</p> <p>13 That might come from the process, from the criminal</p> <p>14 justice process. Precharging, at least some</p> <p>15 counties have a duty to speak with a victim</p> <p>16 regarding the actual charging decision itself.</p> <p>17 They have what are called "charging conferences."</p> <p>18 I never involved myself in those, but that can</p> <p>19 certainly be -- so there are many duties,</p> <p>20 responsibilities that a DA has that touch a crime</p> <p>21 victim. There are also many that have nothing to</p> <p>22 do with the crime victim, but I think I've</p> <p>23 identified the ones that implicate or touch a</p> <p>24 victim of a criminal case.</p> <p>25 Q And do you know of any other district attorney</p>
<p style="text-align: center;">72</p> <p>1 You would agree with me that a DA who's responsible</p> <p>2 for prosecuting the perpetrator of a crime is in a</p> <p>3 different position than somebody else with regard</p> <p>4 to the crime victim, right?</p> <p>5 A I don't know what your -- what does that mean? In</p> <p>6 a different position?</p> <p>7 Q Well, tell me what your responsibility is to the</p> <p>8 crime victim as the DA.</p> <p>9 A To prosecute their case or their alleged</p> <p>10 perpetrator.</p> <p>11 Q And what, if any, responsibility do you have --</p> <p>12 A I wasn't done, Mr. Fox.</p> <p>13 Q Oh, I didn't understand. Go ahead.</p> <p>14 A There's probably 25 different duties that you have</p> <p>15 in a criminal case.</p> <p>16 Q Well, tell me any duty that touches upon the duty</p> <p>17 to communicate with the victim professionally and</p> <p>18 in a way that will give the victim confidence in</p> <p>19 your ability to act professionally.</p> <p>20 A That, I'm happy to do. You have a duty as a</p> <p>21 prosecutor to inform victims about the cases that</p> <p>22 are coming up. You have the duty to inform them</p> <p>23 about decisions you're making on the case. Not</p> <p>24 just charging decisions, but plea negotiation</p> <p>25 decisions. You have the duty to confer with a</p>	<p style="text-align: center;">74</p> <p>1 who's performed any of the duties you just</p> <p>2 enumerated by using the types of communication that</p> <p>3 you used when you texted my client?</p> <p>4 A Do I know of any that have sent those kinds of text</p> <p>5 messages?</p> <p>6 Q Right. Those kinds of text messages which talk</p> <p>7 about having a physical and/or romantic and/or</p> <p>8 sexual relationship. Do you know of any other DA</p> <p>9 in your 25 years who's done that?</p> <p>10 A Right. None of those messages were the fulfillment</p> <p>11 of any of those job duties that we just talked</p> <p>12 about.</p> <p>13 Q Do you know of --</p> <p>14 MR. FOX: Could you read my question</p> <p>15 back?</p> <p>16 (Last question read.)</p> <p>17 THE WITNESS: That have sent those kind</p> <p>18 of messages? No.</p> <p>19 BY MR. FOX:</p> <p>20 Q It is important that in prosecuting domestic abuse</p> <p>21 cases, in fact, not only domestic abuse cases, but</p> <p>22 prosecuting any cases, that you establish a trust</p> <p>23 relationship between yourself and the victim,</p> <p>24 correct?</p> <p>25 A Most times that's true, yes.</p>

<p style="text-align: right;">75</p> <p>1 Q Okay. Is there any situation you can describe for</p> <p>2 the people that are here present where you don't</p> <p>3 try to establish a trust relationship between</p> <p>4 yourself and the victim?</p> <p>5 A Absolutely.</p> <p>6 Q Okay. Tell me when you don't try to establish a</p> <p>7 trust relationship.</p> <p>8 A When it's clear that the victim is hostile to the</p> <p>9 prosecution efforts that you have. You make</p> <p>10 decisions, then, that are most often irrespective</p> <p>11 of the wishes of that victim.</p> <p>12 As an example, a woman who has been</p> <p>13 sexually assaulted, or her child that has been</p> <p>14 sexually assaulted that would normally, you would</p> <p>15 think, be supportive of prosecution efforts.</p> <p>16 Sometimes it presents a case where they try, in</p> <p>17 fact, to revictimize their child, try to keep the</p> <p>18 case against their perpetrator from being</p> <p>19 prosecuted. And in those cases, the trust of that</p> <p>20 particular woman, who is defined as a crime victim,</p> <p>21 the mother of a child crime victim, is absolutely</p> <p>22 irrelevant to prosecution efforts.</p> <p>23 Q Okay. Other than situations where somebody is not</p> <p>24 interested in furthering the prosecution, can you</p> <p>25 name me a situation where you do not seek to</p>	<p style="text-align: right;">77</p> <p>1 Association. Why don't you describe that</p> <p>2 association for me.</p> <p>3 A The DA's Association is a voluntary organization in</p> <p>4 which most prosecutors, both elected and</p> <p>5 nonelected, are members of -- they represent and</p> <p>6 oftentimes advocate for the interests of DAs,</p> <p>7 assistant DAs and assistant attorneys general in</p> <p>8 Wisconsin. It is made up, primarily, of elected</p> <p>9 DAs and assistant DAs, although there are</p> <p>10 representatives on that organization sometimes in</p> <p>11 nonvoting capacities from the Department of</p> <p>12 Justice, from the Department of Administration, at</p> <p>13 least in the context of the IT people and the like.</p> <p>14 But generally, it's made up of prosecutors.</p> <p>15 Q Okay. And to your knowledge, did the letter of</p> <p>16 September 17th, 2010 address anything other than</p> <p>17 the text messages you sent to a crime victim?</p> <p>18 A No.</p> <p>19 Q And in that letter of September 17th, 2010,</p> <p>20 paragraph 2, it says, "Your behavior involving a</p> <p>21 crime victim was repugnant and cannot be</p> <p>22 countenanced." Do you see that?</p> <p>23 A I do see that.</p> <p>24 Q And did you agree with that?</p> <p>25 A I don't know if I agreed or not.</p>
<p style="text-align: right;">76</p> <p>1 maximize the trust between yourself and a victim</p> <p>2 who is fully supportive of the prosecution?</p> <p>3 A No, Mr. Fox. I think trust of the victims, most</p> <p>4 generally, is very important. I agree with you.</p> <p>5 Q Okay. So in a situation such as my client, that</p> <p>6 would be the type of situation where it would be in</p> <p>7 your professional interest and in part of your</p> <p>8 professional duty to encourage the trust</p> <p>9 relationship between the victim and you as the</p> <p>10 district attorney?</p> <p>11 A Yes.</p> <p>12 Q And in sending the text messages that you sent that</p> <p>13 were the subject of -- the subject of this action,</p> <p>14 were you attempting to encourage the trust between</p> <p>15 yourself and my client?</p> <p>16 A No. As I've mentioned, those text messages were</p> <p>17 never sent to execute or prosecute, if you will,</p> <p>18 any duties from within my office.</p> <p>19 Q Let me show you what's been marked as Exhibit</p> <p>20 No. 2.</p> <p>21 A Did you want 1 back?</p> <p>22 Q Well, actually, before we go off of 1, why don't we</p> <p>23 go over that in a little bit more detail. Exhibit</p> <p>24 No. 1, let's identify that for the record. You</p> <p>25 said it's a Wisconsin District Attorney's</p>	<p style="text-align: right;">78</p> <p>1 Q Do you agree with it now?</p> <p>2 A Yes.</p> <p>3 Q Then, on the second sentence, it says, "Crime</p> <p>4 victims have both statutory and constitutional</p> <p>5 protections which are designed to protect them from</p> <p>6 systemic or bureaucratic abuses that may</p> <p>7 unintentionally flow from our criminal justice</p> <p>8 system." Do you agree with that?</p> <p>9 A Yes.</p> <p>10 Q It says, "Our statutes provide sanctions to be</p> <p>11 imposed upon any prosecutor or judge who does not</p> <p>12 zealously guard victim's rights." Did you agree</p> <p>13 with that?</p> <p>14 A They don't have to zealously, but if you remove the</p> <p>15 word "zealously," there are remedies for violations</p> <p>16 of victim's rights, that's correct.</p> <p>17 Q And it says on that document, "Your behavior was</p> <p>18 neither unintentional nor innocent." Do you agree</p> <p>19 with that?</p> <p>20 A No.</p> <p>21 Q And what don't you agree with about that?</p> <p>22 A I think many of my behaviors were unintentional, at</p> <p>23 least as they are using this word.</p> <p>24 Q So what about the texts that you sent, if anything,</p> <p>25 was unintentional?</p>

<p style="text-align: right;">79</p> <p>1 A The results and certainly the consequences that 2 flowed from them. I have to assume for the sake of 3 argument that they had a negative affect or impact 4 upon your client that was unintended. 5 Q Do you believe that they didn't have a negative or 6 adverse affect on my client? 7 A Are you asking me if I believe your client, 8 Mr. Fox? 9 Q No. Do you believe that they didn't have an 10 adverse or negative impact upon her when she 11 received them? 12 A I believe they did not have a negative impact upon 13 her when she received them. That's correct. 14 Q Why do you believe she went to the police? 15 A I can only speculate, sir. 16 Q Well, why don't you speculate to me what you think 17 is the reason. 18 A I'm unwilling to do that. 19 Q Well, just tell me what you believe is the reason. 20 A I don't know. It -- I don't believe it was because 21 she was fearful. 22 Q Do you know of any other reason, other than she 23 found your behavior to be inappropriate, that she 24 went to the police to report your behavior with 25 regard to these text messages?</p>	<p style="text-align: right;">81</p> <p>1 to today, have you not? 2 A I have. 3 Q When is the most recent time you saw them? 4 A I don't know. It had to be in the course of the 5 OLR case. Although, it was before the hearing; so 6 sometime before June of 2012 is the last time I've 7 seen those. 8 Q Okay. And the first text message that's on the 9 sheet -- by the way, so you have not seen them 10 within the last couple of weeks; is that correct? 11 A That's correct. 12 Q You haven't prepared yourself for this deposition 13 by reviewing those text messages? 14 A That is correct. 15 Q So let's go through the text messages themselves. 16 There appears to be a text message of 10/20/09. 17 And this was just -- how much time had -- by the 18 time you sent the text message that is dated 19 10/20/09, how much time had you spent with this 20 woman, my client? 21 A That day? 22 Q No, no. Prior to that time, total hours. 23 A I don't know. Less than two. 24 Q Less than two hours. Okay. And during the time 25 that you spent to her -- with her, prior to sending</p>
<p style="text-align: right;">80</p> <p>1 A I can only speculate why she did that, sir. 2 Q I'm asking you: Do you know of any other reason 3 other than the fact that she objected to these 4 messages? 5 A I don't know. I have no way of knowing. 6 Q Okay. Well, that's what I want to know. If you 7 know of any other reason, that's fine. But 8 you still -- even though you know of no other 9 reason, you don't believe that she went to the 10 police because she objected to the messages you 11 sent to her; is that correct? 12 A I didn't say that. I said, at the time she 13 received these messages, I don't believe they were 14 unwelcome. That's what I said. I don't know later 15 or after the fact why she went and reported them to 16 the police. I don't know that. All I can do is 17 comment as to while the text messages were 18 occurring, her responses to my invitations that 19 these communications stop, those responses and the 20 like. That's all I can comment to you, Mr. Fox. 21 Q Well, why don't we go over those text messages, and 22 then we can address what you claim are her 23 responses or how you characterize them. 24 Here is Exhibit No. 3. Those are the 25 text messages. I believe you've seen those prior</p>	<p style="text-align: right;">82</p> <p>1 the text message that is listed as 10/20/09, did 2 you discuss with her anything about her potential? 3 A I may have on the 20th, in our face-to-face 4 conversation. 5 Q Okay. And what did you say about her potential to 6 her when you had your face-to-face conversation 7 with her, if anything, that you can recall? 8 A I don't recall. I said, "I may have." 9 Q Okay. And when she left the meeting with you, the 10 last meeting that you had with her prior to October 11 20th of '09, did she indicate any desire that you 12 text her? 13 A Prior to the 20th or on the 20th? 14 Q Prior to you actually texting her, did she say, 15 "Would you please text me?" 16 A I don't recall. 17 Q Did she say, "Would you please contact me by 18 telephone?" 19 A I believe she did. 20 Q Okay. Did she -- you believe she did. I want to 21 know: Do you recall, did she say that or not? 22 A I recall her giving me her private cell phone 23 number. 24 Q Well -- 25 A But --</p>

<p style="text-align: right;">83</p> <p>1 Q Did you ask her, as part of your duties as the DA, 2 for contact information so that if you needed to 3 get ahold of her in the course of your professional 4 duties, you could?</p> <p>5 A That's right.</p> <p>6 Q So she gave her telephone number to you in response 7 to your professional request for contact 8 information, correct?</p> <p>9 A I think that's true, Mr. Fox, yes.</p> <p>10 Q Okay. And was that -- did you have any obligation, 11 professionally, to keep that information, her 12 contact information, private?</p> <p>13 A I don't believe so.</p> <p>14 Q Okay. So could you have disseminated her private 15 phone number on the street?</p> <p>16 A I don't know. Would I have? No, I never -- never 17 would I do that. Would I be prohibited from doing 18 that? I don't know.</p> <p>19 Q I'm just talking about you as a professional 20 prosecutor and DA.</p> <p>21 A I wouldn't do that, no, if that's what you're 22 asking.</p> <p>23 Q Right. You get a chance to get her phone number 24 because she's come to you as a crime victim, and 25 you request, as part of your duties to serve her</p>	<p style="text-align: right;">85</p> <p>1 likely respect or defer to with regard to 2 prosecutorial decisions?</p> <p>3 A I don't know if that's true or not.</p> <p>4 Q Okay. And what, if anything, did she say in any 5 conversation preceding this text message of 6 10/20/09, that in any way indicated an interest in 7 having a relationship with you, other than as the 8 person who was going to do the public's duty to 9 prosecute the crime that had been visited upon her?</p> <p>10 A Yes. I believed that day that that certainly 11 happened.</p> <p>12 Q I want to know what happened that you're 13 characterizing as that. And that's the question I 14 asked. What did she say that was any -- that led 15 you to believe that she wanted you to be something 16 other than the person who was going to prosecute 17 her boyfriend for attempting to strangle her to 18 death?</p> <p>19 A Ms. Van Groll told me that she currently did not 20 have a boyfriend and that was not in relation to a 21 specific question. She volunteered that. I 22 perceived that as being flirtatious, as being 23 something leading to an interest in a personal 24 relationship. She told me what she liked to do 25 when she went out. She told me she went to the</p>
<p style="text-align: right;">84</p> <p>1 request that you prosecute the case, "Give me your 2 number," right?</p> <p>3 A Yes.</p> <p>4 Q Okay. And but for the fact that you were the DA, 5 and she was a crime victim who had come to you, 6 there would have been no reason you would have had 7 her number. You wouldn't have even known her, 8 right?</p> <p>9 A I don't know if that's true or not.</p> <p>10 Q Okay.</p> <p>11 A The conversation on the 20th was not entirely 12 professional. It was personal in nature as well.</p> <p>13 Q Well, that wasn't my question. My question is: 14 But for the fact that she had a -- she was 15 reporting a crime to you as a public prosecutor, 16 that would be -- you wouldn't have known her?</p> <p>17 A That's how I met her.</p> <p>18 Q Right.</p> <p>19 A I don't know if I -- I suspect not.</p> <p>20 Q Right.</p> <p>21 A I don't know.</p> <p>22 Q And do you think, and did you believe as a person 23 who is schooled in the law and had this position of 24 public authority, that you were the type of person 25 that someone in the situation of my client would</p>	<p style="text-align: right;">86</p> <p>1 bars a lot. She told me she drank a lot. She told 2 me that she had been fired recently from her job at 3 Little Hearts Day Care. She told me that she had 4 problems with past relationships. That is, with 5 people that she has dated in the past, with 6 their -- I think we talked about even -- I don't 7 want to guess here, but it was something about her 8 past relationships.</p> <p>9 She talked about the hope in the future 10 of her going into some kind of a law enforcement 11 capacity. She talked about her wanting to be a 12 park ranger, or something like that, later on in 13 the future. And it was a very personal, very 14 flirtatious manner in which she spoke both to me 15 and with me during that client confer meeting that 16 we had on the 20th.</p> <p>17 Q So did she tell you she wanted to be a park ranger 18 in a flirtatious way?</p> <p>19 A I don't know if that --</p> <p>20 Q Did she tell you she wanted to be a law enforcement 21 officer in a flirtatious way?</p> <p>22 A I don't know.</p> <p>23 Q Did she tell you that she drank too much in a 24 flirtatious way?</p> <p>25 A I think that's fair. I think that was during the</p>

<p style="text-align: right;">87</p> <p>1 course of, Here's what I like to do when I go out,</p> <p>2 when I socialize. I think her term was, "I like to</p> <p>3 party. I like to go to bars." I remember her</p> <p>4 expressing the behavior of what I'll call "bar</p> <p>5 hopping," but it's going bar to bar, not going to</p> <p>6 just one bar, and she described her enjoyment in</p> <p>7 drinking alcohol. I thought she did that in a</p> <p>8 flirtatious manner, yes.</p> <p>9 Q I see. What was flirtatious about describing -- do</p> <p>10 most people who drink alcohol, at least in your</p> <p>11 experience, enjoy it? Do they do it because they</p> <p>12 enjoy it?</p> <p>13 A Sometimes. Sometimes they do it to medicate.</p> <p>14 Sometimes they do it for a lot of reasons. My</p> <p>15 point is, the manner in which she told me, her body</p> <p>16 language and her manner about her, I perceived as</p> <p>17 being flirtatious.</p> <p>18 Q I understand. But I want to know, what body</p> <p>19 language are you talking about that flirted with</p> <p>20 you?</p> <p>21 A I can't identify specific body language. I can</p> <p>22 only characterize it for you --</p> <p>23 Q You answered that question.</p> <p>24 A I answered it. I don't know.</p> <p>25 Q All right. And anything about her manner that</p>	<p style="text-align: right;">89</p> <p>1 my question as I asked it.</p> <p>2 A All right. Have I ever sent a text message saying,</p> <p>3 "Feel free to text me between 8 and 4 if you're</p> <p>4 bored," to a crime victim before that date?</p> <p>5 Q Correct.</p> <p>6 A Not that I recall.</p> <p>7 Q Have you ever told any other crime victim prior to</p> <p>8 that day to feel free to contact you between 8 and</p> <p>9 4 if they're bored?</p> <p>10 A I don't know, sir.</p> <p>11 Q Okay. Then you said, "You have such potential."</p> <p>12 Prior to meeting my client, have you ever</p> <p>13 contacted a crime victim and told them in the first</p> <p>14 communication you had after your interview with</p> <p>15 them that they had such potential?</p> <p>16 A I don't believe so, but I doubt it.</p> <p>17 Q And then it says, "See you. Ken. Your favorite</p> <p>18 DA."</p> <p>19 A Yes.</p> <p>20 Q And did she indicate to you prior to leaving your</p> <p>21 presence, when she was talking to you, that you</p> <p>22 were her favorite DA?</p> <p>23 A No.</p> <p>24 Q Did you know whether or not, as a result of the</p> <p>25 conversation that you had with her, whether she had</p>
<p style="text-align: right;">88</p> <p>1 flirted with you?</p> <p>2 A I don't know. I don't remember.</p> <p>3 Q Okay.</p> <p>4 A Giggling, laughing, that kind of nonverbal, if you</p> <p>5 would, noncommunicative behavior. She was engaged</p> <p>6 in that during this meeting, during this</p> <p>7 conversation.</p> <p>8 Q Well, giggling and laughing, as you're describing,</p> <p>9 is noncommunicative behavior?</p> <p>10 A Nonverbal.</p> <p>11 Q Okay. Do people occasionally giggle and laugh who</p> <p>12 are nervous because of the situation they're</p> <p>13 involved in?</p> <p>14 A I don't know.</p> <p>15 Q Okay. Well, let's talk about the next thing. You</p> <p>16 write to her, "It was nice talking with you. Feel</p> <p>17 free to text me between 8 and 4 if you are bored."</p> <p>18 A Mm-hmm.</p> <p>19 Q Okay. Is that the type of open invitation you had</p> <p>20 ever given anyone who was a domestic abuse victim</p> <p>21 prior to talking to my client?</p> <p>22 A I've explained that none of these are job-related.</p> <p>23 Q I'm not asking the question you are answering. I'm</p> <p>24 asking these questions so I can get particular</p> <p>25 answers to the particular text. So please answer</p>	<p style="text-align: right;">90</p> <p>1 ever had any encounters with a DA before?</p> <p>2 A No.</p> <p>3 Q Is one of the duties that you have with regard to</p> <p>4 vetting a domestic abuse victim is to ask them</p> <p>5 questions about what prior experience they may or</p> <p>6 may not have had with the criminal justice system?</p> <p>7 A These communications were not part of the vetting</p> <p>8 process.</p> <p>9 Q I'm not asking --</p> <p>10 A And I'm not going to have you mix up saying --</p> <p>11 Q I'm not asking --</p> <p>12 A -- "Here's what you said, and oh, by the way, when</p> <p>13 you do this with victims." That's unfair, Mr. Fox,</p> <p>14 and if I have to object to it, I'm going to.</p> <p>15 Q Well, you can object to what you want, and then</p> <p>16 we'll deal with that with the judge, and he'll tell</p> <p>17 you whether your objections are appropriate. I</p> <p>18 guess the two of you will make objections. But the</p> <p>19 question I said: On any occasion prior to this, is</p> <p>20 one of the duties -- excuse me. That wasn't</p> <p>21 actually the question I asked.</p> <p>22 The question I asked was: Your duties as</p> <p>23 a DA, is one of the things that you explore as a DA</p> <p>24 when you're vetting a victim of domestic abuse is</p> <p>25 what, if any, experience they've had in the</p>

<p style="text-align: right;">91</p> <p>1 criminal justice system?</p> <p>2 A Sometimes it is, yes.</p> <p>3 Q Isn't that part of the factual information you want</p> <p>4 to know so that you can be most effective in</p> <p>5 managing their participation if it's their first</p> <p>6 time, second time, third time, in the criminal</p> <p>7 justice system?</p> <p>8 A Sometimes, yes.</p> <p>9 Q Okay. That's what I'm asking.</p> <p>10 A Sometimes. Not all the time.</p> <p>11 Q All right. Did you, in fact, vet her for any prior</p> <p>12 experience she had with the criminal justice</p> <p>13 system?</p> <p>14 A I don't recall, no.</p> <p>15 Q Okay. She responds, "Don't worry about me. My</p> <p>16 motto is just keep going. And thanks for</p> <p>17 everything."</p> <p>18 A Yes.</p> <p>19 Q Did you believe that was flirtatious?</p> <p>20 A Yes.</p> <p>21 Q Okay. And then the next one is from you at 3:55.</p> <p>22 "I'm not worried. "Well, maybe just a little. I'm</p> <p>23 more curious what made me text you?"</p> <p>24 Why did you write that text to her?</p> <p>25 A I don't know.</p>	<p style="text-align: right;">93</p> <p>1 MR. FOX: Well, I object to him doing</p> <p>2 this, and if we have to take this in front of a</p> <p>3 magistrate, I'll go in front of a magistrate so we</p> <p>4 can just get an answer to the question I asked.</p> <p>5 MR. TORNEHL: He answered it.</p> <p>6 MR. FOX: I'm perfectly willing to do</p> <p>7 that.</p> <p>8 MR. TORNEHL: He answered it.</p> <p>9 BY MR. FOX:</p> <p>10 Q Well, let's just move on from there. "Because</p> <p>11 you're a nice person."</p> <p>12 A Yes.</p> <p>13 Q And you interpreted that as flirtatious?</p> <p>14 A Very much, yes.</p> <p>15 Q Okay. Ken: "Okay. We'll go with that answer.</p> <p>16 Thanks for putting up with me so far. I wish you</p> <p>17 weren't one of this office's clients. You'd be a</p> <p>18 cool person to know."</p> <p>19 That's what you said to her, correct?</p> <p>20 A That's what I texted, yes.</p> <p>21 Q All right. And she said, "Thanks."</p> <p>22 A She never said anything. She texted back,</p> <p>23 "Thanks."</p> <p>24 Q Texted, "Thanks"?</p> <p>25 A Yes. There were no face-to-face communications.</p>
<p style="text-align: right;">92</p> <p>1 Q And she responds, "Cause you're a nice person."</p> <p>2 A Yes.</p> <p>3 Q Now, at that point in time when she's responding to</p> <p>4 you, you realize that you are the person on whom --</p> <p>5 in whom she's reposed the trust to prosecute the</p> <p>6 person who attempted to strangle her to death,</p> <p>7 right?</p> <p>8 A Yes.</p> <p>9 Q Okay.</p> <p>10 A It had nothing to do with these messages.</p> <p>11 Q Keep adding what you want to add, but I'm going</p> <p>12 to just --</p> <p>13 A I intend to, Mr. Fox.</p> <p>14 Q -- ask my question.</p> <p>15 A Go ahead. You keep asking your questions.</p> <p>16 MR. TORNEHL: He's answering the</p> <p>17 questions.</p> <p>18 MR. FOX: Well, he's adding -- he starts</p> <p>19 to answer the question, and then he adds what he</p> <p>20 want to add afterwards, which he knows is</p> <p>21 inappropriate.</p> <p>22 MR. TORNEHL: Well, you know --</p> <p>23 MR. FOX: It is.</p> <p>24 MR. TORNEHL: Well, I object to your</p> <p>25 comments like that.</p>	<p style="text-align: right;">94</p> <p>1 Q Okay. And you believe that the "thanks" was</p> <p>2 flirtatious?</p> <p>3 A I believe it was, yes.</p> <p>4 Q Okay. And on 10/21/09 at 10:48 a.m., you texted</p> <p>5 her, "No text yet today? I'm feeling ignored. Are</p> <p>6 you even up yet?"</p> <p>7 Do you see that?</p> <p>8 A I do see that.</p> <p>9 Q And was that an attempt by you to reconnect with</p> <p>10 her?</p> <p>11 A It was a personal text message to somebody I was</p> <p>12 attempting to develop a personal relationship with,</p> <p>13 yes.</p> <p>14 Q And by the way, you've signed a number of</p> <p>15 affidavits in this proceeding, haven't you?</p> <p>16 A I've signed a declaration.</p> <p>17 Q You signed a declaration. And did you sign -- I</p> <p>18 thought you signed an affidavit initially when you</p> <p>19 were represented by your prior counsel. Did you</p> <p>20 sign an affidavit?</p> <p>21 A It might have been another declaration, but it was</p> <p>22 something about the factual basis for the --</p> <p>23 Q Summary judgment?</p> <p>24 A -- summary judgment motion.</p> <p>25 Q Okay. So you signed two declarations where you're</p>

<p style="text-align: right;">95</p> <p>1 swearing and/or affirming that the information</p> <p>2 there is true on those declarations, correct?</p> <p>3 A Yes, sir.</p> <p>4 Q And you are still affirming that the information</p> <p>5 that you affirmed in those two submissions to the</p> <p>6 court is true and correct, right?</p> <p>7 A I'm sure I am, yes. Nothing's changed.</p> <p>8 Q Okay. Then she says, "Yes, I have a fever. I hope</p> <p>9 it's not H1N1."</p> <p>10 What's H1N1?</p> <p>11 A I think it's the -- some virus. The swine flu, I</p> <p>12 think, if I'm not incorrect in that.</p> <p>13 Q Okay.</p> <p>14 A But that's what she texted me that morning, that's</p> <p>15 correct.</p> <p>16 Q And did you believe that that text was flirtatious?</p> <p>17 A I believe it was personal in nature. I don't know</p> <p>18 if it was flirtatious. It was about a fever.</p> <p>19 Q Okay. And you text her back and said, "Oh no. I</p> <p>20 hope you feel better. Do you need me to bring you</p> <p>21 some chicken soup?"</p> <p>22 A Yes.</p> <p>23 Q And then she texts back, "Laugh out loud. No I</p> <p>24 don't want anything to eat."</p> <p>25 A Yes.</p>	<p style="text-align: right;">97</p> <p>1 prosecute the person who had attempted to strangle</p> <p>2 her to death?</p> <p>3 A Do I now believe that, or was I thinking that at</p> <p>4 the time?</p> <p>5 Q No. Do you believe that now?</p> <p>6 A Yes. Now I believe that. Yes.</p> <p>7 Q Okay. Now, at 11:37, you write, "I know this is</p> <p>8 wrong. I am such an honest guy and straight</p> <p>9 shooter. But I have to know more about you. Does</p> <p>10 that make sense to you? I bet you get this a lot."</p> <p>11 Do you see that?</p> <p>12 A I do see that.</p> <p>13 Q And then you write to her, "Are you the kind of</p> <p>14 girl that likes secret contact with an older</p> <p>15 married elected DA, the riskier the better? Or do</p> <p>16 you want to stop right now before any issues?"</p> <p>17 What did you mean by that?</p> <p>18 A It's self-explanatory. What do you mean, what did</p> <p>19 I mean by that?</p> <p>20 Q What did you mean?</p> <p>21 A I was asking her if she wanted to stop</p> <p>22 communication with me at that moment. Just what it</p> <p>23 says. "Do you want to stop right now?"</p> <p>24 Q And she said, "Dono."</p> <p>25 A That's correct. Immediately.</p>
<p style="text-align: right;">96</p> <p>1 Q Did you believe that was flirtatious?</p> <p>2 A Very much, yes.</p> <p>3 Q Okay. Then you said at 11:23, "How about a</p> <p>4 margarita? That has some fruit juice in it."</p> <p>5 And she said, "Laugh out loud. Too</p> <p>6 funny?"</p> <p>7 Did you believe that was flirtatious?</p> <p>8 A Yes.</p> <p>9 Q Okay. And then you said, "Seriously I hope you</p> <p>10 feel better soon. Please keep in touch. It's</p> <p>11 maybe not the wisest thing I can do, but you are</p> <p>12 awfully sweet. So don't tell anyone, ok?"</p> <p>13 And she responds, "I'm telling everyone.</p> <p>14 JK, Haha, and thanks?"</p> <p>15 And did you believe that was flirtatious?</p> <p>16 A Yes.</p> <p>17 Q And did you believe at the time that you were</p> <p>18 texting her and getting these responses from her</p> <p>19 that she was at all times there reliant on you to</p> <p>20 be -- on your good will to be the prosecutor of the</p> <p>21 person who had attempted to strangle her to death?</p> <p>22 A I don't understand your question.</p> <p>23 Q At all times while you were exchanging text</p> <p>24 messages with her, did you believe she was likely a</p> <p>25 person who believed herself to be reliant on you to</p>	<p style="text-align: right;">98</p> <p>1 Q And you believed that was flirtatious?</p> <p>2 A I do believe that was personal in response. She</p> <p>3 had the ability to say "No" or "Yes, I want to</p> <p>4 stop." I believe very much that response there is</p> <p>5 inconsistent with somebody who was claiming an</p> <p>6 unwelcome text exchange.</p> <p>7 Q Are you familiar with the term "trolling"?</p> <p>8 A I've heard of it.</p> <p>9 Q What does it mean to you?</p> <p>10 A It depends in what context, sir.</p> <p>11 Q Well, what are the types of context in which you</p> <p>12 have used that term?</p> <p>13 A Types of context usually is individuals that are</p> <p>14 out looking for individuals to have some kind of</p> <p>15 connection or relationship with, or something in a</p> <p>16 dating capacity, possibly.</p> <p>17 Q And you've engaged in trolling, haven't you?</p> <p>18 A I think I have, yes.</p> <p>19 Q On how many occasions?</p> <p>20 A I don't know.</p> <p>21 Q At the time that you were writing to her, how many</p> <p>22 occasions had you been trolling?</p> <p>23 A I don't know.</p> <p>24 Q 1:35 p.m. "I need direction from you. You are a</p> <p>25 risk taker and can keep your mouth shut and you</p>

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<p>1 think this is fun."</p> <p>2 Okay. I want to ask you: What did she</p> <p>3 say that said she was a risk taker and can keep her</p> <p>4 mouth shut?</p> <p>5 A That was a question. That's the first half of the</p> <p>6 question. The question is written, "Either you're</p> <p>7 a risk taker and can keep your mouth shut and think</p> <p>8 this is fun, or you think a man twice your age is</p> <p>9 creepy and should stop."</p> <p>10 Q Okay. And she writes back to you, "I have to think</p> <p>11 about that."</p> <p>12 A That's exactly what she wrote.</p> <p>13 Q Now, did you think, at that point, looking back on</p> <p>14 that as a prosecutor, that if a prosecutor's</p> <p>15 writing you that, that it would be reasonable for</p> <p>16 her to have said, "You know, maybe you better not</p> <p>17 act as a prosecutor on my case"? By the time you'd</p> <p>18 written all the things we've gotten up to thus far,</p> <p>19 do you think that would have been reasonable for</p> <p>20 her to do?</p> <p>21 A As a victim or as a person who wanted a --</p> <p>22 Q As a victim of a prosecution where the prosecutor</p> <p>23 is writing her these kinds of communications.</p> <p>24 A I don't know.</p> <p>25 Q Do you know whether or not she wanted to curry your</p>	<p>1 and can keep your mouth shut and you think this is</p> <p>2 fun, or you think a man twice your age is creepy so</p> <p>3 stop."</p> <p>4 She answers, "I have to think about</p> <p>5 that?"</p> <p>6 A Yes.</p> <p>7 Q And you say, "OK. No problem. Either way I think</p> <p>8 you are very nice. I am very smart, but know this</p> <p>9 is all up to you and really does depend how close</p> <p>10 to the edge you live."</p> <p>11 First of all, what did you mean you were</p> <p>12 "very smart"? What were you talking about?</p> <p>13 A I don't know. What do you mean, what am I talking</p> <p>14 about?</p> <p>15 Q Yeah.</p> <p>16 A The words speak for themselves. It says, "I am</p> <p>17 very smart, but I know this is all up to you."</p> <p>18 Q I'm just trying to put "smart" in context. Were</p> <p>19 you using smart -- were you trying to tell her --</p> <p>20 A Put it in context in your argument then. It speaks</p> <p>21 for itself. I don't know what I was --</p> <p>22 Q Well, some people might think that "smart" means</p> <p>23 funny. Some people might think it's intelligent.</p> <p>24 Did you mean funny or intelligent?</p> <p>25 A I don't know. The words speak for themselves.</p>
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<p>1 favor as a result of the fact that you were the</p> <p>2 prosecutor of the person who attempted to strangle</p> <p>3 her to death?</p> <p>4 A I don't know.</p> <p>5 Q Did you ask her?</p> <p>6 A I'm sorry?</p> <p>7 Q Did you ask her whether or not --</p> <p>8 A I asked her if she wanted to stop the communication</p> <p>9 as directly as I --</p> <p>10 Q Did you ask her whether or not she felt pressured</p> <p>11 in any way by you because you were responsible for</p> <p>12 the prosecution of the perpetrator who had</p> <p>13 attempted to strangle her to death?</p> <p>14 A No, I never asked her that.</p> <p>15 Q Why not?</p> <p>16 A I don't know. I don't know in -- or where you</p> <p>17 suggest I should have asked that question or even</p> <p>18 thought that she wanted to curry my favor. That</p> <p>19 thought never crossed my mind.</p> <p>20 Q Well, that might clarify whether or not she was</p> <p>21 flirting with you or just acquiescing to your</p> <p>22 attempts to start this personal relationship,</p> <p>23 right?</p> <p>24 A I don't know.</p> <p>25 Q So let's look at this. "Yes, you are a risk taker</p>	<p>1 Q Okay. "But know this is all up to you and really</p> <p>2 does depend upon how close to the edge you live."</p> <p>3 How close to the edge had she lived when</p> <p>4 she came to you telling you that she had been</p> <p>5 nearly strangled to death?</p> <p>6 A What's your question, Mr. Fox?</p> <p>7 Q How close to the edge did you think she had lived?</p> <p>8 A I don't know.</p> <p>9 Q Okay. She says, "Laugh out loud."</p> <p>10 A She says, "LOL." Or she texts, "LOL" period.</p> <p>11 Q That's what I understand that means. I'm not up</p> <p>12 with the -- but I think that's what it means.</p> <p>13 Then you say, "Still wondering if I'm</p> <p>14 worth it?"</p> <p>15 She texts back, "Don't know."</p> <p>16 You say, "Can I help you answer any</p> <p>17 questions?"</p> <p>18 What did you mean by that?</p> <p>19 A I don't know.</p> <p>20 Q She answers, "No."</p> <p>21 Did you think that was flirtatious?</p> <p>22 A No.</p> <p>23 Q Did you think that was inviting further</p> <p>24 communication from you?</p> <p>25 A I don't know. And she had plenty of opportunities</p>

<p style="text-align: right;">103</p> <p>1 to tell me to stop.</p> <p>2 Q That's not my question.</p> <p>3 A You're asking what I think, and I'm telling you</p> <p>4 what I think, Mr. Fox.</p> <p>5 Q No, you're telling me --</p> <p>6 A I think at that time she could have stopped the</p> <p>7 communication and chose not to.</p> <p>8 Q No, no. That's not --</p> <p>9 A You said, What do you think --</p> <p>10 Q No. I said, What did you think about using the</p> <p>11 word "no"?</p> <p>12 A Yes.</p> <p>13 Q I said, Did you think the word "no" meant she was</p> <p>14 trying to encourage further communication with you?</p> <p>15 A I don't know.</p> <p>16 Q All right. "You don't say much do you?"</p> <p>17 Then she says, "Never really did."</p> <p>18 Did you think that was flirtatious?</p> <p>19 A I don't know.</p> <p>20 Q Did you think, in saying, "Never really did," she</p> <p>21 was trying to encourage more communication with</p> <p>22 you?</p> <p>23 A I don't know what she was trying to do.</p> <p>24 Q Okay.</p> <p>25 A At the time, if you're asking me what I was</p>	<p style="text-align: right;">105</p> <p>1 Who are you referring to as the</p> <p>2 "respected attorney"?</p> <p>3 A Myself.</p> <p>4 Q Okay. "Are you worried about me?"</p> <p>5 Do you see that?</p> <p>6 A I do see that.</p> <p>7 Q And she answers, "I won't lie. Yes."</p> <p>8 Did you think that was flirtatious?</p> <p>9 A Yes.</p> <p>10 Q Okay. So her being worried about you, saying "yes"</p> <p>11 to you, is flirtatious?</p> <p>12 A I took that as a flirtatious response and a</p> <p>13 tongue-in-cheek, "Are you worried about me?" Yes,</p> <p>14 Mr. Fox, that's how I took it. That's how I took</p> <p>15 it at the time.</p> <p>16 Q All right. Question: "You should never lie to me.</p> <p>17 Obviously we have talents to offer that the other</p> <p>18 is intrigued by, or you would have called me</p> <p>19 creepy. You wanna accept?"</p> <p>20 And this is the crime victim now</p> <p>21 answering you at the time, right? This is the</p> <p>22 person who --</p> <p>23 A This is a private communication with --</p> <p>24 Q No.</p> <p>25 A She's not answering as a crime victim.</p>
<p style="text-align: right;">104</p> <p>1 thinking at the time --</p> <p>2 Q No. I want to get through this. "When you are</p> <p>3 that pretty I guess you don't have to. Now the</p> <p>4 compliments start."</p> <p>5 A Yes.</p> <p>6 Q At that point, what are you trying to do by saying</p> <p>7 that?</p> <p>8 A I don't know.</p> <p>9 Q She says, "Oh my."</p> <p>10 Did you think that was flirtatious?</p> <p>11 A Yes.</p> <p>12 Q Okay. So saying "Oh my" to the prosecutor who is</p> <p>13 in charge of prosecuting the person who attempted</p> <p>14 to kill her is --</p> <p>15 A Those have nothing to do with each other. These</p> <p>16 are communications, private, between two private</p> <p>17 individuals. That's what I think, Mr. Fox.</p> <p>18 Q It has to do with --</p> <p>19 A It has nothing to do with the prosecution.</p> <p>20 Q It has to do with the context in which these --</p> <p>21 A That's your argument, Mr. Fox. Give it to the</p> <p>22 jury. If you're asking me, I don't know.</p> <p>23 Q Okay. KK: "It's true. Why would such a</p> <p>24 successful, respected attorney be acting like he's</p> <p>25 in 7th grade?"</p>	<p style="text-align: right;">106</p> <p>1 Q I'm not saying she's answering as a crime victim.</p> <p>2 She is a crime victim at the time she is</p> <p>3 communicating with you, is she not?</p> <p>4 A She is.</p> <p>5 Q And you are the prosecutor of the crime for which</p> <p>6 she is a victim at the time she is communicating</p> <p>7 with you; were you not?</p> <p>8 A That's right, Mr. Fox.</p> <p>9 Q And she says to you, "I don't know how good an idea</p> <p>10 that would be."</p> <p>11 A Yes.</p> <p>12 Q So you get that from a crime victim; did you think</p> <p>13 that was flirtatious?</p> <p>14 A I don't know.</p> <p>15 Q Okay. KK --</p> <p>16 A I didn't take that as coming from a crime victim,</p> <p>17 if that was your question, Mr. Fox.</p> <p>18 Q That's not my question. I'm just saying --</p> <p>19 A You just said, "from a crime victim."</p> <p>20 Q I'm not going to argue with you. You've answered</p> <p>21 the question. Your answer will stand on the</p> <p>22 record.</p> <p>23 A All right.</p> <p>24 Q You can say whatever it was, and you want to make</p> <p>25 the argument, you'll get plenty of time to do that.</p>

<p style="text-align: right;">107</p> <p>1 KK: "Me either. It's stupid. Have you 2 ever been spoiled by someone? I mean like being 3 taken care of and spoil him with attention in 4 return? Without ever saying no?" 5 And she answers, "I've been with a dick 6 head for ten years. No I don't." 7 Do you know who she was referring to as a 8 "dick head"? 9 A I believed it was her ex-boyfriend. 10 Q It was the person who she had accused of attempting 11 to strangle her to death, correct? 12 A It was her ex-boyfriend. 13 Q Was it the person that you were prosecuting? 14 A I don't know if she ever said, "Tried to strangle 15 me to death," but go ahead. Yes, it was the person 16 I was prosecuting. That's who I believed she was 17 referring to. 18 Q In your records -- you don't know that she ever 19 told you that she thought he was -- he attempted to 20 strangle her to death? 21 A I told you, I don't have a recollection of that, 22 no. 23 Q Okay. 24 A If you would like to show me the complaint, I will 25 tell you if she said that.</p>	<p style="text-align: right;">109</p> <p>1 A -- is insulting. Because you're gonna read all 2 these and say, "What does it say?" 3 Q I don't need the speech, and I get a chance to ask 4 the questions. 5 A Please ask a question then. 6 Q You've been in a -- 7 A What does "it" mean? I don't know. I've answered 8 it, Mr. Fox. 9 Q You've been in a courtroom. 10 A I've answered it. I don't know. 11 Q You've been in a courtroom. You're a lawyer, and 12 you've done a lot of trial work, haven't you? 13 A Go ahead. 14 Q You know when you should answer a question when 15 it's posed to you, don't you? 16 A Ask me a question then. 17 Q Okay. You indicated you didn't know what would go 18 slow enough for Shannon's case to get done. Were 19 you talking about a -- is it likely you were 20 talking about some sort of relationship with her? 21 A Yes, it appears that from this context. 22 Q And is it likely that you were talking about a 23 romantic relationship with her? 24 A No. 25 Q And is it likely you were talking about a sexual</p>
<p style="text-align: right;">108</p> <p>1 Q "Quite frankly I don't know what would happen. It 2 would go slow enough for Shannon's case to get 3 done." 4 A Did you not want to ask me if I thought that was 5 flirtatious, by the way? 6 Q No. I'm asking you the questions I want to ask 7 you. 8 A Oh, okay. Go ahead. I'm sorry. You've asked all 9 the other ones. You want to skip over that one, 10 Mr. Fox, go ahead. I'm sorry to interrupt you. 11 Q I don't think you're sorry at all. 12 "Quite frankly I don't know what would 13 happen. It would go slow enough for Shannon's case 14 to get done?" 15 "It would go slow enough." What is "it"? 16 What would go slow enough for Shannon's case to get 17 done? 18 A What are you asking me, sir? What do the words -- 19 Q What did you mean by "it" when you said, "It would 20 go slow enough for Shannon's case to get done"? 21 A I don't recall. I can guess what I meant. I don't 22 have an independent recollection of what I meant by 23 that phrase. I see the words just like you do, and 24 this reading to me -- 25 Q I don't need --</p>	<p style="text-align: right;">110</p> <p>1 relationship with her? 2 A Absolutely not. Nothing in this communication was 3 of a sexual relationship. 4 Q And when you say "Shannon's case," I just want to 5 make sure, Shannon is the person you were 6 prosecuting, right? 7 A Yes. 8 Q And what's the significance in this sentence of 9 Shannon's case getting -- of something going slow 10 enough so Shannon's case could get done? What was 11 the relationship between those two subject matters 12 in this sentence? 13 A Are you asking me again to think back and 14 speculate? Or I don't know what you're asking me, 15 Mr. -- 16 MR. TORNEHL: He's not asking you to 17 speculate, and I don't want you to speculate; so 18 just say you don't know. 19 THE WITNESS: I don't know. I don't 20 know. 21 BY MR. FOX: 22 Q Okay. That's fine. "Remember it would have to be 23 special enough to risk all." 24 Okay. What was "it"? 25 A It appears, if that's what -- it's likely that it</p>

<p style="text-align: right;">111</p> <p>1 was a personal relationship with your client.</p> <p>2 Q Well, a personal relationship -- I just want to</p> <p>3 know what your definitions are.</p> <p>4 A Okay.</p> <p>5 Q Because a personal relationship with my client</p> <p>6 could be had by a prosecutor, a DA, without any</p> <p>7 potential violation of your professional duties.</p> <p>8 In other words, you could say "hi" to her on the</p> <p>9 street. She could say "hi" to you. There would be</p> <p>10 nothing wrong with that type of relationship,</p> <p>11 right?</p> <p>12 A That's correct.</p> <p>13 Q Okay. But you're talking about a different kind of</p> <p>14 a personal relationship, aren't you?</p> <p>15 A I am, and I refer to that later, yes.</p> <p>16 Q Okay. And when you're talking about "it" -- so the</p> <p>17 likely type of personal relationship you mean by</p> <p>18 "it" is a romantic relationship, correct?</p> <p>19 A Not necessarily, no.</p> <p>20 Q That is the likely relationship you were referring</p> <p>21 to, is it not?</p> <p>22 A No, not necessarily.</p> <p>23 Q Okay.</p> <p>24 A There's something you don't understand about that</p> <p>25 answer, Mr. Fox.</p>	<p style="text-align: right;">113</p> <p>1 A I don't believe so, no.</p> <p>2 Q Was it likely you were referring to a romantic or</p> <p>3 sexual passion?</p> <p>4 A I don't know.</p> <p>5 Q What other passion do you know of other than a</p> <p>6 romantic or sexual passion that you might have been</p> <p>7 referring to in this sentence?</p> <p>8 A I don't know, sir.</p> <p>9 Q Okay. "It's either perfect or I'm not going to do</p> <p>10 it."</p> <p>11 Once again, we're back to "it." What is</p> <p>12 "it"?</p> <p>13 A I assume in this context, it's the personal</p> <p>14 relationship with your client.</p> <p>15 Q Okay. But a personal relationship meaning a</p> <p>16 relationship that is likely romantic or sexual or</p> <p>17 not?</p> <p>18 A I refer to it later, what kind of relationship I</p> <p>19 was looking for.</p> <p>20 Q Well, then tell me what you're referring to later</p> <p>21 that you were likely looking for.</p> <p>22 A I asked her to have a drink with me. That kind of</p> <p>23 relationship, Mr. Fox.</p> <p>24 Q So are you saying that when you said -- when you</p> <p>25 wrote these texts saying, "Remember it would have</p>
<p style="text-align: right;">112</p> <p>1 Q And then it would say, "It would have to be special</p> <p>2 enough to risk all."</p> <p>3 So I want to know, what would be special?</p> <p>4 What did you mean by the word "special"?</p> <p>5 A I don't know.</p> <p>6 Q Okay. And what did you mean by the words "risk</p> <p>7 all"?</p> <p>8 A I don't know.</p> <p>9 Q Okay. And she said, "I don't know." She answers</p> <p>10 your text when you say, "Remember it would have to</p> <p>11 be special enough to risk all," and she says, "I</p> <p>12 don't know."</p> <p>13 Did you believe that to be flirtatious?</p> <p>14 A She texted back, "I don't know," that's correct.</p> <p>15 Q Right. Did you believe her text back to you, "I</p> <p>16 don't know," in response to your text was</p> <p>17 flirtatious?</p> <p>18 A At the time, I don't know if I perceived that as</p> <p>19 being flirtatious.</p> <p>20 Q Okay. Then you go on to say, "If you are not worth</p> <p>21 that kind of passion we'll know it right away."</p> <p>22 What type of passion were you referring</p> <p>23 to?</p> <p>24 A I don't know, sir.</p> <p>25 Q Were you referring to a romantic or sexual passion?</p>	<p style="text-align: right;">114</p> <p>1 to be special enough to risk all," what you were</p> <p>2 suggesting to her is that we should have a drink</p> <p>3 together and that would be special enough to risk</p> <p>4 all?</p> <p>5 A In fact, I say, "Would you like to meet for a</p> <p>6 drink? Please tell me."</p> <p>7 Q No, no. I'm just --</p> <p>8 A That's exactly what I say.</p> <p>9 Q I'm not talking about your other text. "Remember</p> <p>10 it would have to be special enough to risk all."</p> <p>11 When you're referring to --</p> <p>12 A What is "it"?</p> <p>13 Q Yeah. That was having a drink?</p> <p>14 A I don't know. It was a personal relationship. The</p> <p>15 kind of personal relationship that I later defined</p> <p>16 for her, yes, Mr. Fox.</p> <p>17 Q Okay. Now, the next text you have is, "Hey Miss</p> <p>18 Communication, what's the sticking point? Your low</p> <p>19 self-esteem and your fear can't play in my big</p> <p>20 sandbox?"</p> <p>21 Now, here's one of the things that I want</p> <p>22 to ask you about.</p> <p>23 A All right.</p> <p>24 Q Her low self-esteem. Why did you have reason to</p> <p>25 write a text that talked about her low self-esteem?</p>

<p style="text-align: right;">115</p> <p>1 A She mentioned that the day before in our</p> <p>2 face-to-face conversation.</p> <p>3 Q And is it not a common tenant of people who discuss</p> <p>4 domestic abuse victims that they often times have</p> <p>5 low self-esteem?</p> <p>6 A Not always, no.</p> <p>7 Q I did not say always. I said that they often times</p> <p>8 suffer from low self-esteem.</p> <p>9 A I don't attribute low self-esteem as a personal</p> <p>10 characteristic to a domestic violence victim, no.</p> <p>11 Q Well, when you're a doctor, you don't necessarily</p> <p>12 attribute cancer to a patient who exhibits a lump,</p> <p>13 but it's something you look for, correct?</p> <p>14 A Right. I don't look for low self-esteem in</p> <p>15 domestic violence --</p> <p>16 Q So that's not something that, at least you've ever</p> <p>17 experienced in the prosecution of domestic violence</p> <p>18 cases, that individuals who write about these --</p> <p>19 scholars who write about these cases tell you is a</p> <p>20 common feature of domestic abuse victims, that they</p> <p>21 suffer from low self-esteem? You've never heard</p> <p>22 that?</p> <p>23 A I don't recall ever reading or hearing that.</p> <p>24 Q Okay. And you've never heard that from advocacy</p> <p>25 groups, right?</p>	<p style="text-align: right;">117</p> <p>1 A I don't know.</p> <p>2 Q And what is your "big sandbox"?</p> <p>3 A I don't know. It was being flirtatious.</p> <p>4 Q Okay. And what were you referring to about fear?</p> <p>5 Did she indicate to you that she was a person who</p> <p>6 might be afraid?</p> <p>7 A Not at all.</p> <p>8 Q Okay. So when she was coming to you for this</p> <p>9 domestic abuse situation that you ended up</p> <p>10 prosecuting, did she indicate to you that this was</p> <p>11 the first time that she had ever been abused by</p> <p>12 Shannon?</p> <p>13 A I honestly don't recall. I don't recall the</p> <p>14 history that she gave me as I sit here today. If</p> <p>15 she did, I would have it in my file and would have</p> <p>16 noted that in the prosecution file.</p> <p>17 Q Okay. And then you've got here, "I'm leaving for</p> <p>18 the day. Let me know after 8 tomorrow."</p> <p>19 What did you want her to let you know?</p> <p>20 A I don't know. It appears that I was asking for her</p> <p>21 response on the possibility of a relationship. I'm</p> <p>22 guessing that's what I meant by that.</p> <p>23 Q The possibility of playing in your big sandbox?</p> <p>24 A I said the possibility -- maybe you didn't hear me.</p> <p>25 The possibility of a relationship.</p>
<p style="text-align: right;">116</p> <p>1 A I don't recall.</p> <p>2 Q Okay.</p> <p>3 A Certainly, advocacy groups say lots of things.</p> <p>4 Q So you believed that on the basis of what she said</p> <p>5 that she might have low self-esteem, right?</p> <p>6 A She told me. Not may have. She told me she did.</p> <p>7 Q So you believed she had low self-esteem?</p> <p>8 A I don't know. I believe she told me that.</p> <p>9 Q Okay. I'm just asking what you believed. Now,</p> <p>10 you've told me what she told you, but did you</p> <p>11 believe she was telling the truth when she said she</p> <p>12 had low self-esteem?</p> <p>13 A Absolutely not. And I can explain that if you'd</p> <p>14 ever give me the chance to.</p> <p>15 Q No. You can have all the chances you want. You'll</p> <p>16 have your full day in court, and you get to explain</p> <p>17 all of this in exactly the way you want. I just</p> <p>18 want you to answer my questions here.</p> <p>19 A That's fine.</p> <p>20 Q "And your fear you can't play in my big sandbox."</p> <p>21 What does that refer to?</p> <p>22 A I don't know. It was being flirtatious with her.</p> <p>23 I was being flirtatious.</p> <p>24 Q "Or, question mark, question mark, question mark."</p> <p>25 What does that refer to?</p>	<p style="text-align: right;">118</p> <p>1 Q Okay. I just don't see the relationship word ever</p> <p>2 used here.</p> <p>3 A You asked me what "it" meant, and I told you on a</p> <p>4 number of occasions; so that's what "it" means,</p> <p>5 Mr. Fox.</p> <p>6 Q Okay. Well, you didn't want her -- well, you told</p> <p>7 me at one point that "it" -- at least if I</p> <p>8 understood you correctly, and I may be wrong, that</p> <p>9 "it" meant having a drink with her?</p> <p>10 A That's correct.</p> <p>11 Q That you wanted her to let you know by 8 tomorrow</p> <p>12 whether or not she'd have a drink with you?</p> <p>13 A I said "it" meant a relationship. The kind of</p> <p>14 relationship that is defined by, like, having a</p> <p>15 drink with someone.</p> <p>16 Q I see.</p> <p>17 A That kind of relationship. What it doesn't mean is</p> <p>18 sexting or having sex with her. That's what it</p> <p>19 doesn't mean, Mr. Fox.</p> <p>20 Q Okay. "You will either be excited or grossed out</p> <p>21 about the opportunity you have."</p> <p>22 So if I understand you correctly, the</p> <p>23 opportunity to have a drink with you might either</p> <p>24 excite her or gross her out?</p> <p>25 A I said "it" was the personal relationship, Mr. Fox.</p>

<p style="text-align: right;">119</p> <p>1 The kind of which includes having a drink with</p> <p>2 somebody. "It" means relationship, Mr. Fox.</p> <p>3 Q "But it will only come once."</p> <p>4 What will only come once? The chance to</p> <p>5 have a relationship with you?</p> <p>6 A It says, "The opportunity will only come once."</p> <p>7 Yes.</p> <p>8 Q Okay. 10/22, the next day. "What do you hope your</p> <p>9 life looks like in 5 years? What kind of</p> <p>10 residence? A job, making how much in the</p> <p>11 household? A relationship with what kind of guy?</p> <p>12 Dollar signs, question mark."</p> <p>13 Why did you write that to her?</p> <p>14 A They're just questions. They're questions that</p> <p>15 inquire about a personal relationship.</p> <p>16 Q And is it --</p> <p>17 A The kind of -- I'm sorry.</p> <p>18 Q Okay.</p> <p>19 A It says, "What kind of residence? What kind of</p> <p>20 relationship? What kind of guy?"</p> <p>21 Q I just want to know, the kind of relationship of</p> <p>22 having a drink with a guy, what would that have to</p> <p>23 do with her job?</p> <p>24 A I asked her what kind of job she would like in five</p> <p>25 years.</p>	<p style="text-align: right;">121</p> <p>1 mentioned that she had stopped talking yesterday,</p> <p>2 did you feel that she still wanted to be</p> <p>3 flirtatious with you, but she was just going into</p> <p>4 radio silence and not flirting anymore or what?</p> <p>5 A I was asking.</p> <p>6 Q Okay.</p> <p>7 A I noted that she stopped.</p> <p>8 Q And she says, "OK." And then you say, "Are you</p> <p>9 serious? OK? That's it? Are you in a board</p> <p>10 meeting? You are beautiful and would make a great</p> <p>11 young partner someday. I won't beg."</p> <p>12 And she responds, "Laugh out loud."</p> <p>13 A Yes.</p> <p>14 Q And you thought that was flirtatious?</p> <p>15 A I did.</p> <p>16 Q Did you think she was joking?</p> <p>17 A I don't know. I think she was --</p> <p>18 Q Did you think she thought you were joking?</p> <p>19 A About what, sir?</p> <p>20 Q About what you said in that email. "Are you</p> <p>21 serious? OK? That's it? Are you in a board</p> <p>22 meeting? You are beautiful and would make a great</p> <p>23 partner someday. I won't beg." Did you believe</p> <p>24 that she thought you were joking?</p> <p>25 A I don't know, sir.</p>
<p style="text-align: right;">120</p> <p>1 Q And what would having a drink with her, that kind</p> <p>2 of relationship, have to do with making how much in</p> <p>3 a household?</p> <p>4 A I don't know, Mr. Fox. Those are the kinds of</p> <p>5 things you talk about with people that you have</p> <p>6 drinks with, with that kind of relationship.</p> <p>7 Q And what would the kind of relationship with people</p> <p>8 you have drinks with have to do with dollar signs?</p> <p>9 A I don't know, Mr. Fox.</p> <p>10 Q Okay. Then the next one is, "What do you hope your</p> <p>11 life looks" -- excuse me. I'm sorry.</p> <p>12 "No guy, just graduating from college,</p> <p>13 house that bought for Shanel" -- is Shanel her</p> <p>14 daughter?</p> <p>15 A I think that's who she's referring to.</p> <p>16 Q "And I, doing part time work as a park ranger for</p> <p>17 High Cliff."</p> <p>18 Now, did you see that as flirtatious?</p> <p>19 A I did.</p> <p>20 Q And did you see -- did you think that maybe she</p> <p>21 wanted you to be a fellow park ranger?</p> <p>22 A No.</p> <p>23 Q Okay. Then you have, "How are you feeling today?</p> <p>24 You stopped talking yesterday."</p> <p>25 Now, did you tell her that -- when you</p>	<p style="text-align: right;">122</p> <p>1 Q Well, the next line you say, "I'm serious." Does</p> <p>2 that indicate to you that you thought she might</p> <p>3 believe you were joking?</p> <p>4 A No, not necessarily.</p> <p>5 Q "I'm the attorney. I have the \$350,000 house. I</p> <p>6 have the 6-figure career. You may be the tall,</p> <p>7 young, hot nymph, but I am the prize."</p> <p>8 Now, did you say that in order to get her</p> <p>9 to have a drink with you?</p> <p>10 A I wanted her to have a personal relationship with</p> <p>11 me; yes, sir.</p> <p>12 Q Well, what would your -- the cost of your house and</p> <p>13 your 6-figure career have to do with her having a</p> <p>14 relationship with you?</p> <p>15 A I was trying to impress her, sir.</p> <p>16 Q And you said, "I'm the attorney."</p> <p>17 A That's right.</p> <p>18 Q So you knew that you were trying to impress her by</p> <p>19 the fact you were the attorney?</p> <p>20 A The attorney. Not the district attorney. Yes. An</p> <p>21 attorney.</p> <p>22 Q I see.</p> <p>23 A Impress her with --</p> <p>24 Q So this is a victim of -- I just want to say, at</p> <p>25 the time you write this, this victim of domestic</p>

<p style="text-align: right;">123</p> <p>1 abuse, you say, "I'm the attorney," but you</p> <p>2 expected her to understand that you were just</p> <p>3 referring to the fact that you were an attorney as</p> <p>4 opposed to the district attorney prosecuting the</p> <p>5 person who had attempted to strangle her?</p> <p>6 A What's your question, Mr. Fox?</p> <p>7 Q Is that true?</p> <p>8 A Are you asking me what I expected her to</p> <p>9 understand? I don't know.</p> <p>10 Q Okay. And "I am the prize." What was that about?</p> <p>11 A That I was being boastful. That I believed that I</p> <p>12 was worthy of having a personal relationship with</p> <p>13 her. That's what that means.</p> <p>14 Q Okay. "Start convincing." That's what you told</p> <p>15 her?</p> <p>16 A Yes.</p> <p>17 Q "Start convincing." What did you want her to start</p> <p>18 convincing?</p> <p>19 A I don't know.</p> <p>20 Q Did you want her to -- well, let me ask you:</p> <p>21 Aren't you telling her to start convincing you that</p> <p>22 she wants to have a relationship with you?</p> <p>23 A I don't know. There's many facets to that</p> <p>24 statement.</p> <p>25 Q And then we have -- the next one is, "I think your</p>	<p style="text-align: right;">125</p> <p>1 be interested in you unless she was gonna be your</p> <p>2 woman?</p> <p>3 A At the time, that's exactly what I thought she</p> <p>4 meant, Mr. Fox.</p> <p>5 Q Were you drinking at the time?</p> <p>6 A I was not drinking at the time, no.</p> <p>7 Q Were you taking drugs at the time?</p> <p>8 A I was.</p> <p>9 Q What were you taking at the time?</p> <p>10 A Ambien, Xanax and Vicodin.</p> <p>11 Q Okay. And do you believe it's the Ambien, Xanax</p> <p>12 and Vicodin that caused you to think the way that</p> <p>13 you have indicated you thought about these</p> <p>14 communications as you've testified here today?</p> <p>15 A The combination of Ambien and Xanax and Vicodin act</p> <p>16 to, in fact, lower or remove inhibitions. That's</p> <p>17 exactly what I think was happening at the time.</p> <p>18 Those inhibitions, because of my prescription drug</p> <p>19 use, were removed, and that's, in my opinion, as I</p> <p>20 sit here today, what I believe was the contributing</p> <p>21 factor, the largest factor in my poor decision</p> <p>22 making those three days, yes.</p> <p>23 Q And did your Ambien and the drug use you've now</p> <p>24 described in answer to the last question have</p> <p>25 anything to do with the way you related to Amy</p>
<p style="text-align: right;">124</p> <p>1 wife would have something to say about that. I</p> <p>2 don't think I could be the other woman."</p> <p>3 A That's right.</p> <p>4 Q Do you think that was flirtatious?</p> <p>5 A Yes.</p> <p>6 Q Okay. And so you thought she was trying to</p> <p>7 encourage you to want to have a relationship with</p> <p>8 her, meaning --</p> <p>9 A I think she didn't want to be the other woman. But</p> <p>10 she had no idea, at that point, what the status of</p> <p>11 my marriage was.</p> <p>12 Q Well, had you talked to her about the status of the</p> <p>13 marriage?</p> <p>14 A Not yet, no.</p> <p>15 Q She apparently knew you were married, correct?</p> <p>16 A She believed that I was, yes, that I was married.</p> <p>17 As it turns out, I was separated at the time.</p> <p>18 Q Well, why did she believe you were married?</p> <p>19 A I think because I had told her that earlier, if she</p> <p>20 liked married guys. Something about that.</p> <p>21 Q I see. So you thought when she said, "I don't</p> <p>22 think I would" -- "I think your wife would have</p> <p>23 something to say about that," and "I don't think I</p> <p>24 could be the other woman," your belief was that she</p> <p>25 was telling you that she could -- that she wouldn't</p>	<p style="text-align: right;">126</p> <p>1 Price?</p> <p>2 A I don't believe so.</p> <p>3 Q Did any professional tell you or offer you a</p> <p>4 professional diagnosis so we can get a medical</p> <p>5 record where they have diagnosed the reason that</p> <p>6 you behaved as you did here was because of the use</p> <p>7 of those drugs?</p> <p>8 A I don't think so.</p> <p>9 Q Okay. "Finally an opinion. I would not expect you</p> <p>10 to be the other woman. I would want you to be so</p> <p>11 hot and treat me so well that you'd be the woman."</p> <p>12 Now, was that an invitation for her to</p> <p>13 have a drink with you?</p> <p>14 A That wasn't an invitation for anything, sir.</p> <p>15 Q Okay.</p> <p>16 A It was an invitation to have a personal</p> <p>17 relationship with me.</p> <p>18 Q But the personal relationship you've described that</p> <p>19 you wanted to have with her was the type of</p> <p>20 relationship where she'd have a drink with you?</p> <p>21 A It's vis-à-vis the her not wanting to be the other</p> <p>22 woman. That's what it refers to.</p> <p>23 Q Well, when you say, "I want you to be so hot," what</p> <p>24 does that have to do with having a drink with you?</p> <p>25 A I don't know.</p>

<p style="text-align: right;">127</p> <p>1 Q And when you say -- weren't you, in fact, and isn't</p> <p>2 it reasonable to interpret these communications</p> <p>3 you're sending to her to believe that you wanted to</p> <p>4 have a romantic or sexual relationship with her?</p> <p>5 A Absolutely not. I would have said so, and I said</p> <p>6 just the opposite later.</p> <p>7 Q Okay. "Are you that good?"</p> <p>8 And what did you mean by, "Are you that</p> <p>9 good?" Was she a good drinker?</p> <p>10 A I don't know, sir.</p> <p>11 Q Okay. "You forgot to write me for the last time</p> <p>12 saying you could never give me enough attention to</p> <p>13 steal me away, and you are so modest that you</p> <p>14 wouldn't know how to."</p> <p>15 What did you mean by that?</p> <p>16 A It's convoluted. I have no idea what I meant by</p> <p>17 that.</p> <p>18 Q And she says, "Right." If you had no idea what you</p> <p>19 meant, what did she mean?</p> <p>20 A I suspect that's fair. It doesn't make any sense.</p> <p>21 Q Okay. And then you said, "And you may look good at</p> <p>22 first glance, but women that are the blonde, 6ft</p> <p>23 tall, legs and great bodies don't like to be shown</p> <p>24 off to please their men."</p> <p>25 What did you mean by that?</p>	<p style="text-align: right;">129</p> <p>1 A -- stopped communication with her at that time.</p> <p>2 Q Well, but, you have indicated to me that you didn't</p> <p>3 get the notion she wasn't interested in you until</p> <p>4 the 3rd of November. Why did you stop text</p> <p>5 messaging her --</p> <p>6 A I was no longer interested in her.</p> <p>7 Q Ah. Did you ever then -- since you decided in</p> <p>8 those two weeks that you were no longer interested</p> <p>9 in her, did you text her and say, "I'm sorry, I'm</p> <p>10 really not interested in you"? Or not even if</p> <p>11 you're sorry. Say, "I'm really not interested in</p> <p>12 you in that -- in the way I may have suggested in</p> <p>13 the prior texts"? You just went radio silent,</p> <p>14 right?</p> <p>15 A Not at all. That was my last comment because I was</p> <p>16 leaving it up to her. "If you change your mind and</p> <p>17 want to meet for a drink, tell me. Otherwise I</p> <p>18 will respect your desire to be left alone." That's</p> <p>19 as clear as I could make it.</p> <p>20 Q Well, no. But you have just testified that the</p> <p>21 reason you didn't text her in two weeks was because</p> <p>22 you were no longer interested in her?</p> <p>23 A I'm saying, after that point, I did not have any</p> <p>24 contact with her. That's correct. And in fact, I</p> <p>25 was not interested in her any longer. That's</p>
<p style="text-align: right;">128</p> <p>1 A I don't know. It's equally convoluted.</p> <p>2 Q And, "When the case is over, if you change your</p> <p>3 mind and want to meet for a drink, please tell me.</p> <p>4 Otherwise, I will respect your desire to be left</p> <p>5 alone."</p> <p>6 A Yes, sir.</p> <p>7 Q So that's the drink comment you're talking about,</p> <p>8 right?</p> <p>9 A Among other important comments, yes, sir.</p> <p>10 Q Okay. Do you mention a drink in any other text</p> <p>11 message where you talk about either the fact that</p> <p>12 she's hot, the money you have, the other woman, all</p> <p>13 those other aspects which might be interpreted as</p> <p>14 part and parcel of a personal relationship? Do you</p> <p>15 mention a drink in any of those?</p> <p>16 A I believe this is the only place I mention a drink.</p> <p>17 Q I see. And isn't it true that by that time, you</p> <p>18 kind of got the notion that she wasn't too</p> <p>19 interested in you?</p> <p>20 A No.</p> <p>21 Q When did you get the notion she wasn't too</p> <p>22 interested in you?</p> <p>23 A On the 3rd of November, two weeks later. That was</p> <p>24 my last text message, so I --</p> <p>25 Q Right.</p>	<p style="text-align: right;">130</p> <p>1 correct.</p> <p>2 Q Okay. And what other contact did you have with her</p> <p>3 in the two weeks between the last text message that</p> <p>4 you have and the time that you were informed that</p> <p>5 she had gone to the police and reported these</p> <p>6 messages?</p> <p>7 A I had none.</p> <p>8 Q Okay.</p> <p>9 A I had no other contact of any kind with your</p> <p>10 client.</p> <p>11 Q As you look here -- as you sit here today and you</p> <p>12 testify, is it conceivable to you that the victim</p> <p>13 of domestic abuse for whom you are the prosecuting</p> <p>14 attorney might misconstrue or have some concern</p> <p>15 about these types of messages being sent to them</p> <p>16 while prosecution is ongoing?</p> <p>17 A Are you talking about some hypothetical victim or</p> <p>18 your client, Mr. Fox?</p> <p>19 Q Well, let's talk about a hypothetical victim first.</p> <p>20 A Okay. I don't know. I don't know what a</p> <p>21 hypothetical victim might appreciate by these</p> <p>22 texts.</p> <p>23 Q Okay. But you believe that my client really was</p> <p>24 not upset by these texts?</p> <p>25 A That's correct.</p>

<p style="text-align: right;">131</p> <p>1 Q Now, when you said you pled no contest to a number</p> <p>2 of things with regard to ethical violations, let's</p> <p>3 review those again. There were three, I believe,</p> <p>4 that you said you pled no contest to?</p> <p>5 A Yeah. There were three categories of violation.</p> <p>6 There's the incident regarding your client, and</p> <p>7 then there's an incident regarding two social</p> <p>8 workers as well.</p> <p>9 Q And were those two social workers social workers in</p> <p>10 Chilton?</p> <p>11 A Yes.</p> <p>12 Q And did those incidents occur before or after the</p> <p>13 incident that -- the texting with my client?</p> <p>14 A I believe it was before.</p> <p>15 Q Okay. And what, if anything, did you understand</p> <p>16 those two social workers objected to you doing with</p> <p>17 regard to them?</p> <p>18 A One incident was a vulgar comment that I had made</p> <p>19 to a social worker in a witness prep session when</p> <p>20 she was about to testify. And the other was a</p> <p>21 comment that I had allegedly made, although I don't</p> <p>22 recall it, and in fact, don't believe it ever</p> <p>23 occurred; nonetheless, alleged to have made either</p> <p>24 about a reporter on TV or about a court reporter.</p> <p>25 It was still unclear who I was alleged to have made</p>	<p style="text-align: right;">133</p> <p>1 distinct violations, the ones that I have referred</p> <p>2 to, related to the texting incident.</p> <p>3 Q Okay.</p> <p>4 A Two; one of harassment, and one of offensive</p> <p>5 personality was related to the vulgar comment in</p> <p>6 the witness prep session.</p> <p>7 Q Okay.</p> <p>8 A And then one violation of offensive personality</p> <p>9 regarding the comment in the courtroom about the TV</p> <p>10 reporter.</p> <p>11 Q They actually have a category called "offensive</p> <p>12 personality" for lawyers?</p> <p>13 A You'd be surprised what they came up with. The</p> <p>14 answer is yes.</p> <p>15 MR. TORNEHL: Can we take a break pretty</p> <p>16 soon? We've been here for four hours.</p> <p>17 (Short recess.)</p> <p>18 BY MR. FOX:</p> <p>19 Q What's the recommended suspension, if there is one,</p> <p>20 for you now?</p> <p>21 A The referee recommended a four-month suspension.</p> <p>22 The Supreme Court has had the case since August and</p> <p>23 had not yet announced their decision.</p> <p>24 Q Okay. So you don't -- are you contesting the</p> <p>25 recommended suspension right now?</p>
<p style="text-align: right;">132</p> <p>1 the comment about. About a part of her body. And</p> <p>2 again, I believe that did not occur, Mr. Fox. I</p> <p>3 believe, however, the first incident, the vulgar</p> <p>4 comment in the witness prep session, did occur. I</p> <p>5 recall that occurring, and I admitted my</p> <p>6 involvement in that behavior.</p> <p>7 Q And that was part of the -- did you plead no</p> <p>8 contest to all of the allegations against you in</p> <p>9 the OLR proceeding?</p> <p>10 A No.</p> <p>11 Q How many allegations did you start out with?</p> <p>12 A Eleven.</p> <p>13 Q And was there some negotiation or bargaining with</p> <p>14 regard to which of those you were going to plead</p> <p>15 to?</p> <p>16 A There were attempts to negotiate. It turned out</p> <p>17 to -- or ended up that the OLR dismissed several of</p> <p>18 the counts upon their investigation of those</p> <p>19 allegations.</p> <p>20 Q And did the OLR dismiss all but three, or how many</p> <p>21 were left that the OLR didn't dismiss in their</p> <p>22 investigation?</p> <p>23 A I think it was five.</p> <p>24 Q Okay.</p> <p>25 A But it was three regarding your client. Three</p>	<p style="text-align: right;">134</p> <p>1 A I am, yes.</p> <p>2 Q And this is just helpful to me in assessing this</p> <p>3 case. Are you attempting to get no suspension? Is</p> <p>4 that what you're fighting for right now?</p> <p>5 A Yes.</p> <p>6 Q Okay.</p> <p>7 A Well, or less than four months. I had recommended</p> <p>8 a public reprimand. OLR had recommended a</p> <p>9 six-month suspension. The referee then, after the</p> <p>10 hearing, recommended the four-month suspension, and</p> <p>11 ultimately, it's up to the Supreme Court.</p> <p>12 MR. FOX: Gotcha. Okay. Thanks. That's</p> <p>13 all I have for you.</p> <p>14 EXAMINATION</p> <p>15 BY MS. SCHMIDT:</p> <p>16 Q Mr. Kratz, I have a couple follow-up questions. My</p> <p>17 name is Linda Schmidt. I represent Peerless</p> <p>18 Indemnity Insurance Company. And as I understand</p> <p>19 it --</p> <p>20 MR. FOX: Excuse me. I'm going to step</p> <p>21 out here. You can go ahead without me. I'm just</p> <p>22 going to return this phone call. I'm sure the</p> <p>23 transcript will be the same if I'm here or not</p> <p>24 here.</p> <p>25 (Mr. Fox exits the room.)</p>

<p style="text-align: right;">135</p> <p>1 BY MS. SCHMIDT:</p> <p>2 Q I understand you were representing yourself on</p> <p>3 insurance coverage issues -- on the insurance</p> <p>4 coverage dispute; is that correct?</p> <p>5 A Presently, yes.</p> <p>6 Q Have you had any communications with plaintiff's</p> <p>7 counsel, Mr. Fox here, regarding the insurance</p> <p>8 coverage motion filed by Peerless Indemnity in this</p> <p>9 action?</p> <p>10 A No.</p> <p>11 Q Okay. Have you had any communications with Mr. Fox</p> <p>12 or someone from his office about the insurance</p> <p>13 coverage dispute at all?</p> <p>14 A Only -- only tangentially or even parenthetically</p> <p>15 through my lawyer. Just, was he was going to be</p> <p>16 filing a response? Was he going to be taking a</p> <p>17 position on it? That's the only communication that</p> <p>18 I had heard from that camp. Does that answer your</p> <p>19 question?</p> <p>20 Q I believe so. So you have not coordinated</p> <p>21 providing a declaration to plaintiff's counsel?</p> <p>22 A I have not.</p> <p>23 Q You have not coordinated with plaintiff's counsel</p> <p>24 on a strategy for a response to the motion?</p> <p>25 A I have not.</p>	<p style="text-align: right;">137</p> <p>1 still see it as something in furtherance of your</p> <p>2 role as a prosecutor?</p> <p>3 A I think that's true.</p> <p>4 Q Okay.</p> <p>5 (Exhibit No. 6 was marked.)</p> <p>6 BY MS. SCHMIDT:</p> <p>7 Q So Mr. Kratz, in front of you is what's been marked</p> <p>8 as Exhibit 5. I recognize it's a rather large</p> <p>9 document, but if you take a look at it, is that</p> <p>10 something that you can identify?</p> <p>11 A It's Exhibit 6, but yes, I can identify it.</p> <p>12 Q Exhibit 6.</p> <p>13 A I believe this to be the policy, if I'm not</p> <p>14 mistaken. Is this the thing that you had me sign</p> <p>15 earlier today?</p> <p>16 Q For the stipulation --</p> <p>17 MR. TORNEHL: Is this both policies, by</p> <p>18 the way? Because there's an umbrella policy in</p> <p>19 this case.</p> <p>20 MS. SCHMIDT: It's part of it. It's a</p> <p>21 home owner's policy, right. That provides also --</p> <p>22 MR. TORNEHL: Umbrella coverage.</p> <p>23 MS. SCHMIDT: Correct.</p> <p>24 BY MS. SCHMIDT:</p> <p>25 Q And when you say "the policy," you're referring to</p>
<p style="text-align: right;">136</p> <p>1 Q You do intend to file your own response to the</p> <p>2 motion; is that correct?</p> <p>3 A I do.</p> <p>4 MR. TORNEHL: Which I will probably</p> <p>5 assist only by electronically filing it for</p> <p>6 Mr. Kratz.</p> <p>7 BY MS. SCHMIDT:</p> <p>8 Q Understood. Mr. Kratz, is there a distinction to</p> <p>9 you between performing one's duties as a prosecutor</p> <p>10 and performing tasks as a prosecutor?</p> <p>11 A I haven't thought about it. I don't know. It</p> <p>12 seems to be no, but --</p> <p>13 Q So in your mind, if you say I'm performing my</p> <p>14 duties as a prosecutor, or I'm performing my tasks</p> <p>15 as a prosecutor, as you sit here today, that would</p> <p>16 be one in the same thing, correct?</p> <p>17 A I -- now that, you know, the -- duties suggest</p> <p>18 either a statutory or perhaps even, you know,</p> <p>19 administrative law-type of responsibilities that</p> <p>20 you would have, and tasks somehow seem more menial</p> <p>21 to me, or at least discretionary rather than</p> <p>22 mandatory. Honestly, that's the first time I've</p> <p>23 thought of that distinction.</p> <p>24 Q Fair enough. But in either case, if you were</p> <p>25 performing duties or performing tasks, you would</p>	<p style="text-align: right;">138</p> <p>1 the Peerless Indemnity policy that was issued to</p> <p>2 you for the policy period that's indicated on the</p> <p>3 front page, June 14th, '09 to June 14th, 2010?</p> <p>4 A Yes. Although, I, perhaps like Mr. Tornehl,</p> <p>5 believed it to be two different policies. But if</p> <p>6 it's one in the same, that's, I believe, what this</p> <p>7 is, yes.</p> <p>8 Q And have you had an opportunity to look at the</p> <p>9 policy since the commencement of this case?</p> <p>10 A I have not -- not in detail where I could find</p> <p>11 anything for you.</p> <p>12 Q But you have reviewed the policy?</p> <p>13 A I have had it sent to me, I believe, in PDF</p> <p>14 version.</p> <p>15 THE WITNESS: Is that correct?</p> <p>16 MR. TORNEHL: I think so.</p> <p>17 THE WITNESS: Yes. I've seen this.</p> <p>18 So --</p> <p>19 BY MS. SCHMIDT:</p> <p>20 Q And after it was sent to you --</p> <p>21 A Or you guys maybe did. Maybe early on in the case,</p> <p>22 a PDF version of it.</p> <p>23 MR. TORNEHL: It might have been an</p> <p>24 affidavit.</p> <p>25 THE WITNESS: Yeah. I'm sorry. Go</p>

<p style="text-align: right;">139</p> <p>1 ahead. Yeah. That was probably an attachment, 2 maybe, to one of your pleadings. Okay. Go ahead. 3 BY MS. SCHMIDT: 4 Q Right. And when you received that copy as the 5 attachment to the affidavit, or separately, did you 6 look through the policy? 7 A Not to any great extent, no. 8 Q Have you looked at the policy as you prepared to 9 submit a response to Peerless Indemnity's -- 10 A Not to -- 11 Q -- motion on coverage? 12 A Not to the extent that I need to, no. 13 Q Do you intend to -- 14 A I intend to, before the end of the day on the 10th. 15 Q So sitting here today, is there something that you 16 can point to in the policy that you believe 17 provides coverage for the claims in these actions? 18 In this action? 19 A I'm not prepared to answer that. I don't know. 20 Q Okay. I'm almost afraid to raise this exhibit 21 again, the text messages, given the amount of time 22 we've spent on it. And I'm sorry, I don't actually 23 know which exhibit number it is, but do you still 24 have that? 25 MR. TORNEHL: Is it 3? I think it's 3.</p>	<p style="text-align: right;">141</p> <p>1 pending, I believed at the time had the absolute 2 right not to be subjected to any kind of 3 relationship. Certainly, none other than just 4 casual with the individual responsible for 5 prosecuting on that case. It was the appearance of 6 conflict. Certainly, what's referred in many cases 7 as the "appearance of impropriety" that goes with 8 that. I recognized that early on, and really 9 throughout these text messages, especially in my 10 insistence that any relationship only be developed 11 after the case was completed. 12 Q You believe in the course of these text messages 13 that you insisted that any relationship only be 14 developed after the completion of the prosecution 15 of the crime against her -- 16 A That's correct. 17 Q Okay. And can you just point me to where you state 18 that to her? 19 A Sure. First is on page 2 of when I ask her, "Do 20 you want to stop right now before there's any 21 issues?" Although, there's a more specific 22 reference. On page 3 of the fourth line down is 23 the reference to that. "I don't know what would 24 happen. It would go slow enough for Shannon's case 25 to get done." I think that's the only references</p>
<p style="text-align: right;">140</p> <p>1 THE WITNESS: Go ahead. 2 BY MS. SCHMIDT: 3 Q So taking a look at Exhibit 3, on the first page, 4 the third message from you down on the page, the 5 one that's marked 4:04 p.m.? 6 A Yes. 7 Q You state in that message, "I wish you weren't one 8 of this office's clients." 9 Why do you state that; do you recall? 10 A I don't know, but it was -- as I sit here now, it's 11 an incorrect assignment of status to her. She was 12 not a client of mine at all. 13 Q As you stated earlier, the State of Wisconsin or 14 Calumet County was your client? 15 A The State of Wisconsin was. 16 Q And recognizing that maybe it was an incorrect 17 phrasing of her relationship that she was a crime 18 victim on one of the cases you were prosecuting, 19 correct? 20 A Yes. The "I wish you weren't one of these clients" 21 is a recognition of an inappropriate current status 22 or relationship that we had to pursue a personal 23 relationship. Very much, yes. 24 Q And why would it be inappropriate? 25 A Well, any crime victim, at least while the case is</p>	<p style="text-align: right;">142</p> <p>1 to that. Unless -- 2 Q And the last -- 3 A -- I'm mistaken. 4 Q I'm sorry. And the last -- 5 A And then -- I'm sorry. The very last reference, 6 the very last message as well, "When the case is 7 over." 8 Q Going back to page 2, the text that you just 9 identified in your answer, "Or do you want to stop 10 right now before any issues"? 11 A Yes. 12 Q There, you don't actually state to her that there 13 will be no relationship until after the case, do 14 you? 15 A I do later on, yes. 16 Q But in this particular message, you were actually 17 asking her if she wants to stop, correct? 18 A Does she want to stop communications is really what 19 I was talking about. 20 Q But you were asking her, correct? 21 A I was asking her if she wanted to stop, yes. 22 Q Back to the first page, the last message from you 23 on that page that indicates that it was sent at 24 11:32 a.m. 25 A Yes.</p>

<p style="text-align: right;">143</p> <p>1 Q You state in the course of that text message, "It's 2 maybe not the wisest thing I can do, but you are 3 awfully sweet." 4 A Yes. 5 Q What did you mean by the "not wisest thing"? 6 A I don't know. It's, "Please keep in touch. Maybe 7 not the wisest things I can do, but you're awfully 8 sweet." And then, "Don't tell anyone." I can -- 9 again, I can speculate or guess what that means. 10 It likely refers to my recognition that pursuing a 11 personal relationship with her, at least during the 12 case prosecution, before it's ended, was not 13 appropriate. 14 Q And you were, in fact, with these text messages, 15 until the very last message, seeking to pursue a 16 relationship with her, correct? 17 A I'm not sure that's true on the 20th, necessarily. 18 The 21st, it is. The early, rather innocuous 19 messages seemed kind of just friendly, but 20 certainly, that's the clear goal as the text 21 messages proceed. 22 Q And whether we're talking about the text messages 23 on the 20th, or later on the 21st, 22nd, when you 24 were seeking to pursue a relationship with her, you 25 were, at the time, still the prosecutor on the case</p>	<p style="text-align: right;">145</p> <p>1 STATE OF WISCONSIN) 2) SS: 3 COUNTY OF MILWAUKEE) 4 5 I, BREAH E. MADSON, Registered 6 Professional Reporter and Notary Public in and for the 7 State of Wisconsin, do hereby certify that the above 8 deposition of KENNETH KRATZ was recorded by me on 9 January 8, 2013, and reduced to writing under my 10 personal direction. 11 I further certify that I am not a 12 relative or employee or attorney or counsel of any of 13 the parties, or a relative or employee of such attorney 14 or counsel, or financially interested directly or 15 indirectly in this action. 16 In witness whereof I have hereunder set 17 my hand and affixed my seal of office at Milwaukee, 18 Wisconsin, this 14th day of January, 2013. 19 20 21 22 Notary Public In and for the State of Wisconsin 23 24 25 My Commission Expires: June 02, 2013.</p>
<p style="text-align: right;">144</p> <p>1 against her ex-boyfriend, right, for which she was 2 a crime victim, correct? 3 A Yes. I was still the attorney on the case, that's 4 correct. 5 Q And you were sending her those text messages at 6 that time while you were still the prosecutor of -- 7 A While I was the attorney of record, yes. 8 Q And you recognized that there was maybe something 9 inappropriate about pursuing a relationship at the 10 same time that you were prosecuting the case? 11 A Absolutely, yes. 12 MS. SCHMIDT: I don't believe I have any 13 other questions. 14 (Proceedings concluded at 5:36 p.m.) 15 16 17 18 19 20 21 22 23 24 25</p>	

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